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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ROBERT MANNING II, Derivatively on  
Behalf of EMBARK TECHNOLOGY,  
INC. (f/k/a NORTHERN GENESIS  
ACQUISITION CORP. II.),

Plaintiff,

v.

IAN ROBERTSON, KEN MANGET,  
CHRIS JARRATT, PAUL DALGLISH,  
ROBERT SCHAEFER, BRAD  
SPARKES, ALEX RODRIGUES,  
RICHARD HAWWA, ELAINE CHAO,  
PAT GRADY, and BRANDON MOAK,

Defendants,

and,

EMBARK TECHNOLOGY, INC. (f/k/a  
NORTHERN GENESIS ACQUISITION  
CORP. II),

Nominal Defendant.

Case No:

**VERIFIED SHAREHOLDER  
DERIVATIVE COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Robert Manning II (“Plaintiff”), by and through his undersigned  
2 counsel, brings this action derivatively on behalf of Nominal Defendant Embark  
3 Technology, Inc. (“Embark” or the “Company”). Embark was f/k/a Northern Genesis  
4 Acquisition Corp. II (“NGA”). Plaintiff’s allegations are based upon his personal  
5 knowledge as to himself and his own acts, and upon information and belief, developed  
6 from the investigation and analysis by Plaintiff’s counsel, including a review of  
7 publicly available information, including filings by Embark with the U.S. Securities  
8 and Exchange Commission (“SEC”), press releases, news reports, analyst reports,  
9 investor conference transcripts, publicly available filings in lawsuits, and matters of  
10 public record.

### 11 **NATURE OF THE ACTION**

12 1. This is a shareholder derivative action brought in the right, and for the  
13 benefit, of Embark against certain of its former and current officers and directors  
14 seeking to remedy Defendants’ (defined below) violations of state and federal law  
15 that began on or about January 1, 2021 and continued through the present (the  
16 “Relevant Period”), and which have caused substantial harm to the Company.

### 17 **JURISDICTION AND VENUE**

18 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331  
19 because Plaintiff’s claims raise a federal question under Section 14(a) of the Exchange  
20 Act (15 U.S.C. § 78n(a)(1)), Rule 14a-9 of the Exchange Act (17 C.F.R. § 240.14a-  
21 9), and Section 21D of the Exchange Act (15 U.S.C. § 78u-4(f)).

22 3. This Court has supplemental jurisdiction over Plaintiff’s state law claims  
23 pursuant to 28 U.S.C. § 1367(a).

24 4. This derivative action is not a collusive action to confer jurisdiction on a  
25 court of the United States that it would not otherwise have.

26 5. The Court has personal jurisdiction over each of the Defendants because  
27 each Defendant is either a corporation with principal executive offices in this District  
28 and conducting business and maintaining operations in this District, or he or she is an

1 individual who is a citizen of California or who has minimum contacts with this  
2 District to justify the exercise of jurisdiction over them.

3 6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1401  
4 because a substantial portion of the transactions and wrongs complained of herein  
5 occurred in this District, Defendants have conducted business in this District,  
6 Defendants' actions have had an effect in this District, and Embark is headquartered  
7 in this District.

### 8 **BRIEF BACKGROUND**

9 7. NGA, a Special Acquisition Company (a "SPAC company"), had its  
10 initial public offering on January 15, 2021. It sold the units at a price of \$10 per unit  
11 generating \$414 million in gross proceeds received by the Company.

12 8. The original corporate version of Embark (hereinafter, "Legacy  
13 Embark") was founded as a startup company in 2016, designed to function as an  
14 autonomous vehicle company that builds software for autonomous trucks.

15 9. NGA filed a merger agreement with Legacy Embark on June 22, 2021.

16 10. On November 10, 2021, NGA officially merged (the "Merger") with  
17 Legacy Embark, and changed its name to Embark Technology, Inc. The shares of  
18 common stock are listed on the stock market under the symbol "EMBK."

### 19 **THE PARTIES**

#### 20 **Plaintiff**

21 11. *Plaintiff Robert Manning II* is, and was at relevant times, a shareholder  
22 of Embark. Plaintiff will fairly and adequately represent the interests of the  
23 shareholders in enforcing the rights of the corporation.

#### 24 **Nominal Defendant**

25 12. *Nominal Defendant Embark* is a Delaware corporation, headquartered  
26 at 424 Townsend Street, San Francisco, California. The Company's shares trade on  
27 the New York Stock Exchange ("NYSE") under the ticker symbol "EMBK.

#### 28 **NGA Defendants**

1           13. **Defendant Ian Robertson** (“Robertson”) has served on the Company’s  
 2 Board since November 2021. Defendant Robertson is a member of the Company’s  
 3 Audit and Nominating and Corporate Governance Committees. Defendant Robertson  
 4 served as NGA’s Chief Executive Officer (“CEO”) and a member of its Board until  
 5 the Merger.

6           14. **Defendant Ken Manget** (“Manget”) served as NGA’s Chief Financial  
 7 Officer (“CFO”) from before the Merger until the Merger. Manget also served on  
 8 NGA’s Board from June 2020 to November 2021. Defendant Manget had a non-  
 9 controlling interest and owned 10,350,000 founder shares of common stock.

10           15. **Defendant Christopher Jarratt** (“Jarratt”) served on NGA’s Board and  
 11 was Chair of the Board from November 2020 to November 2021. According to the  
 12 Initial Statement of Beneficial Ownership of Securities, Defendant Jarratt had a non-  
 13 controlling interest and owned 10,350,000 founder shares of common stock.

14           16. **Defendant Paul Dalglish** (“Dalglish”) served on the NGA’s Board from  
 15 June 2020 to November 2021. Defendant Dalglish had a non-controlling interest and  
 16 owned 10,350,000 founder shares of common stock

17           17. **Defendant Robert Schaefer** (“Schaefer”) served on NGA’s Board from  
 18 July 2020 to November 2021. Defendant Schaefer had a non-controlling interest and  
 19 owned 10,350,000 founder shares of common stock.

20           18. **Defendant Brad Sparkes** (“Sparkes”) served on NGA’s Board from June  
 21 2020 to November 2021. Defendant Sparkes had a non-controlling interest and  
 22 owned 10,350,000 founder shares of common stock

23           19. Defendants Robertson, Manget, Dalglish, Jarrett, Schaefer and Sparkes  
 24 are hereinafter referred to as the “NGA Defendants.”

## 25 **Embark Defendants**

26           20. **Defendant Alex Rodrigues** (“Rodrigues”) is the CEO of Embark and  
 27 has served on Embark’s Board since November 2021. Defendant Rodrigues was also  
 28 the Co-founder and the CEO of Legacy Embark. According to the Company’s proxy

1 statement, dated April 26, 2022 (the “2022 Proxy Statement”), Defendant Rodrigues  
2 beneficially owns 50,034,332 shares of the Company’s class B common stock,  
3 approximately \$255 million worth of Company stock. For the fiscal year ended  
4 December 31, 2021 (the “2021 Fiscal Year”), Defendant Rodrigues received  
5 \$57,391,582 in total compensation from the Company. This included \$180,000 in  
6 salary and \$57,211,582 in stock awards.

7 21. **Defendant Richard Hawwa** (“Hawwa”) has been the Company’s CFO  
8 since November 2021. Defendant Hawwa served as the Legacy Embark’s CFO from  
9 May 2021 until November 2021. According to the 2022 Proxy statement, Defendant  
10 Hawwa owns 1,211,846 shares of the Company’s class A common stock,  
11 approximately \$6.2 million worth of Company stock. For the 2021 Fiscal Year,  
12 Defendant Hawwa received \$37,726,346 in total compensation from Embark. This  
13 included \$228,846 in salary, \$87,500 in bonus, and \$37,410,000 in stock awards.

14 22. **Defendant Elaine Chao** (“Chao”) has served on the Company’s Board  
15 since November 2021. Defendant Chao is also a member of the Company’s Audit  
16 Committee. Defendant Chao also served on the Legacy Embark’s board. According  
17 to the 2022 Proxy statement, Defendant Chao owns 419,485 shares of the Company’s  
18 class A common stock, approximately \$2.1 million worth of Company stock. For the  
19 2021 Fiscal Year, Defendant Chao received \$2,427,953 in total compensation from  
20 the Company. This included \$100,698 in fees earned or paid in cash and \$2,327,254  
21 in stock awards.

22 23. **Defendant Pat Grady** (“Grady”) has served as a Company director since  
23 November 2021. Defendant Grady was also the chair of the Board’s Compensation  
24 Committee and is a member of the Board’s Corporate Governance Committee.  
25 According to the 2022 Proxy statement, Defendant Grady beneficially owned  
26 53,886,635 shares of the Company’s class A common stock which accounts for 14.9%  
27 of Embark’s total Common A stock, approximately \$275 million worth of Company  
28 stock.



1 placing trust in the incorporators and management of the SPAC. A SPAC does not  
2 have operations or assets other than cash and limited investments. It offers securities  
3 for cash and places substantially all the offering proceeds into a trust or escrow  
4 account for future use in the acquisition of one or more private operating companies.

5 30. The SPAC will identify target companies and attempt to complete one  
6 or more business combination transactions, after which, the SPAC will continue the  
7 operations of the acquired company or companies as a public company. A SPAC  
8 typically provides an 18-to-24-month period to identify and complete an initial  
9 business combination transaction.

10 31. The incorporation documents or the equity agreements of a SPAC  
11 requires the public shareholders of the SPAC to vote on a transaction. That triggers  
12 pre-merger regulatory filings with financial reporting and disclosures. SPACs are  
13 regulated by the SEC and are required to follow Generally Accepted Accounting  
14 Principles (“GAAP”).

15 32. According to the GAAP guidelines, for an entity to determine whether  
16 to classify shares issued in the legal form of equity as liability instruments, it needs to  
17 consider if it represents (i) mandatorily redeemable financial instruments under ASC  
18 480-10-25-14 or (ii) unconditional obligations to deliver a variable number of equity  
19 shares that are liabilities under ASC 480-10-25-14. As SPACs are regulated by the  
20 SEC and need to register with the SEC, they need to consider the possibility that  
21 shares issued in the legal form of equity may require classification as temporary equity  
22 instruments under ASC 480- S99-3A if they are redeemable: (a) at a fixed or  
23 determinable price on a fixed or determinable date, (b) at the option of the holder, or  
24 (c) upon the occurrence of an event that is not solely within the control of the issuer

25 33. NGA, a SPAC company, had its initial public offering on January 15,  
26 2021. It sold the units at a price of \$10 per unit generating \$414 million in gross  
27 proceeds received by the Company.

28



1           34. NGA filed a prospectus with the SEC in connection with the Company's  
2 IPO, which the prospectus stated that its management team has significant experience  
3 in identifying and acquiring a business. It further stated that for evaluating  
4 prospective businesses, NGA will conduct a thorough due diligence review to  
5 determine if the business is worth acquiring or not. NGA's purpose was to acquire a  
6 business that had an ability to succeed if it were managed by NGA's team, network,  
7 and expertise.

8           35. Legacy Embark was founded as a startup company in 2016, designed to  
9 function as an autonomous vehicle company that builds software for autonomous  
10 trucks.

11           36. NGA filed a merger agreement with Legacy Embark on June 22, 2021.  
12 NGA and Legacy Embark issued a joint press release on June 23, 2021, in which the  
13 Company assured the market that it will work with Legacy Embark and make sure it  
14 transitions to a "great public company."

15           37. On November 10, 2021, NGA officially merged (the "Merger") with  
16 Legacy Embark, and changed its name to Embark Technology, Inc. The shares of  
17 common stock were listed on the stock market under the symbol "EMBK." On  
18 November 18, 2021, the closing sale price of shares of the Class A common stock  
19 was \$7.17. Company's warrants were listed on the stock market under the symbol  
20 "EMBKW." On November 18, 2021, the closing sale price of the warrants was \$1.34.

### 21           **NGA Misclassified Material Information in its Financial Reports**

#### 22           **Leading up to the IPO (the Misclassification Misconduct)**

23           38. A SPAC charter often has a provision that provides the SPAC cannot  
24 redeem public shares that would cause its net tangible assets to be less than US  
25 \$5,000,001 following such redemptions. NGA had the same provision in its charter.  
26 NGA's Registration Statement, stated that under the NGA Existing Charter, public  
27 holders of NGA public shares may elect to have their NGA public shares redeemed  
28 for cash at the applicable redemption price per share equal to the quotient obtained by



1 dividing (i) the aggregate amount on deposit in the Trust Account as of two business  
2 days prior to the consummation of the Business Combination (including interest net  
3 of taxes payable), by (ii) the total number of NGA public shares (the “Redemption  
4 Payment”); provided that NGA will not redeem any shares of NGA Common Stock  
5 to the extent that such redemption would result in NGA having net tangible assets (as  
6 determined in accordance with Rule 3a51-1(g) (1) of the Exchange Act) of less than  
7 \$5,000,001. As of 2021, the Redemption Payment would have amounted to  
8 approximately \$10.00 per share.

9 39. The Company, however, later admitted that the redeemable shares  
10 described in its financial statements that were issued as of January 15, 2021 and March  
11 31, 2021 were not correctly classified. NGA incorrectly classified the portion of its  
12 public shares as permanent equity so it could maintain stockholders’ equity greater  
13 than \$5,000,000. It was necessary for NGA to maintain its stockholders’ equity above  
14 \$5,000,000 because NGA could only complete its Merger with Legacy Embark if  
15 NGA had net tangible assets if at least \$5,000,001 under its charter. Thus, in order to  
16 continue to exist as a SPAC company, NGA incorrectly classified some of its public  
17 shares as “shares not subject to redemption.” This misconduct is referred to herein as  
18 the “Misclassification Misconduct.”

19 40. An entity can classify its securities in one of the following three  
20 categories: liability, permanent equity, and temporary equity. The classification on  
21 the balance sheet is important because it affects a company’s financial statements. If  
22 a company classifies its securities as a liability, then the return on investment is  
23 reflected in the net income category, whereas if a company classifies its securities as  
24 equity, then the returns on investment are generally reflected in the equity category,  
25 without having any impact on the net income.

26 41. In addition, when the securities are classified as temporary equity, it may  
27 affect an entity’s reported earnings per shares (“EPS”) because adjustments to the  
28

1 redemption amount are often treated as dividends which can change the proper  
2 method and outcome in calculating the EPS.

3 42. EPS is a fundamental measure of the health and profitability of any  
4 corporation. EPS is a financial ratio that calculates how much earnings a company is  
5 generating per share. In other words, it is a measurement used to inform shareholders  
6 how much money they would likely receive if the company were to be liquidated.  
7 However, the NGA Defendants' Misclassification Misconduct directly affected  
8 NGA's EPS.

9 **The Overpayment Misconduct**

10 43. As noted above, NGA had no operations of its own, but instead sought  
11 to combine with an operating company and take on that company's operations as its  
12 own. In such a transaction, the operating company, here Legacy Embark, benefits  
13 from the business combination by getting access to the investment funds raised by the  
14 SPAC, here NGA, without being subjected to the more formal requirements imposed  
15 in bringing a private company public via the initial public offering process ("IPO").  
16 The SPAC, here NGA, benefits if the combination with the target company is prudent  
17 and enhances the value of the SPAC's shares.

18 44. According to the Merger agreement filed on June 22, 2021, NGA agreed  
19 to acquire Legacy Embark for a base purchase price of \$4.25 billion. Pursuant to the  
20 Preliminary Proxy Statement, the terms of the merger agreement between NGA and  
21 Legacy Embark provided, *inter alia*, as follows:

22 [E]ach share of Embark common stock that is issued and  
23 outstanding immediately prior to the Effective Time (other than (i) any  
24 shares of Embark common stock subject to Embark Awards or warrants,  
25 (ii) any share of Embark common stock held in the treasury of Embark  
26 immediately prior to the Effective Time ("Treasury Shares"), which shall  
27 be canceled as part of the Business Combination, and (iii) any shares of  
28 Embark common stock electing to demand statutory appraisal rights due

1 to the Business Combination (“Dissenting Shares”)) (collectively, the  
2 “Exchange Shares”), will be canceled and converted into the right to  
3 receive the applicable portion of the number of shares of Embark  
4 Technology Common Stock equal to an exchange ratio equal to the  
5 quotient of (i) (a) the base purchase price of \$4,250,000,000 (as adjusted  
6 pursuant to the terms of the Merger Agreement) *divided by* (b) \$10.00  
7 (the “Aggregate Merger Consideration”) and the Aggregate Fully  
8 Diluted Company Common Shares (as defined in the Merger  
9 Agreement) (the “Exchange Ratio”). Each holder of Exchange Shares  
10 shall have its Exchange Shares converted into either (i) Embark  
11 Technology Class A Common Stock, or (ii) Embark Technology Class  
12 B Common Stock.

13 45. The Merger closed on November 10, 2021, on the terms set forth in the  
14 Merger agreement. NGA acquired all of the outstanding equity interests of Legacy  
15 Embark for approximately \$4.25 billion in aggregate consideration.

16 46. These terms were unfavorable and unreasonable to NGA’s shareholders,  
17 given that Legacy Embark suffered from numerous financial and operational  
18 deficiencies. A report issued by The Bear Cave (the “Bear Cave Report”)) published  
19 on January 6, 2022 stated that “Embark appears to lack true economic substance,” and  
20 that the “company holds no patents, has only a dozen or so test trucks, and may be  
21 more bark than bite.” The Bear Cave Report further stated that Embark’s technology  
22 underlying its business operations was based on puffery rather than actual substance.

23 47. All those issues made Legacy Embark a less valuable acquisition than  
24 NGA’s shareholders were led to believe.

25 48. Legacy Embark relied heavily on its trade secrets and technological  
26 methods to run its business, but it held no patents. Legacy Embark relied on the fact  
27 that it could keep its competitors from reverse engineering its products. If Legacy  
28 Embark’s trade secrets were to be disclosed in the future or a third-party reverse

1 engineered the technology Legacy Embark heavily relied on, Legacy Embark had no  
2 right to prevent a third party from using it.

3 49. Furthermore, the autonomous driving technology is highly complex and  
4 new. The industry faces significant regulatory and technological challenges. Legacy  
5 Embark's autonomous driving technology and related hardware and software could  
6 have undetected defects, errors or bugs in hardware or software. If any of these  
7 potential defects materialized, Embark would incur significant development, repair,  
8 and replacement costs. Not only that, but also it exposed Embark to tremendous  
9 future litigation costs including breach of contract, product liability, and tort liability.  
10 The Merger Prospectus stated that:

11 Additionally, there may be undetected errors or defects especially  
12 as it introduces new systems or as new versions are released. These risks  
13 are particularly significant in the freight transport market given the high  
14 potential value of each load, as any such errors or defects could result in  
15 costly delays or losses, leading to the delay or prevention of the adoption  
16 of autonomous driving technology in trucks. There can be no assurance  
17 that Embark will be able to detect and fix any defects in its products prior  
18 to their sale to or installation for customers. Errors or defects could result  
19 in costly delays or losses, leading to the delay or prevention of the of the  
20 adoption of autonomous driving technology in trucks. There can be no  
21 assurance that Embark will be able to detect and fix any defects in its  
22 products prior to their sale to or installation for customers. Errors or  
23 defects in Embark's product may only be discovered after they have been  
24 tested, commercialized, and deployed.

25 50. NGA Defendants knew or should have known that Legacy Embark's  
26 management team and existing Board had limited experience managing a public  
27 company. Defendant Robertson was the only NGA member that served on the Board  
28 of Embark. The Merger Prospectus stated that:

1 Legacy Embark may be subject to risks associated with potential  
2 future strategic alliances, partnerships, investments or acquisitions, all of  
3 which could divert management's attention, result in Embark incurring  
4 significant or acquisitions, all of which could divert management's  
5 attention, result in Embark incurring significant costs or operating  
6 difficulties and dilution to its stockholders, disrupt its operations and  
7 adversely affect its business, results of operations or financial condition.

8 51. In light of these issues, the NGA Defendants breached their fiduciary  
9 duties to NGA by causing NGA to merge with Legacy Embark on terms that were  
10 unfavorable to the Company and its pre-Merger shareholders.

11 52. Furthermore, it was highly likely that if Legacy Embark's autonomous  
12 vehicle technologies fail to perform as expected, were inferior to those of its  
13 competitors, or were perceived as less safe or more expensive than those of its  
14 competitors or non-autonomous vehicles, Embark's financial performance and  
15 prospects would be adversely impacted in the future.

16 53. The NGA Defendants were required to know the true state of Legacy  
17 Embark's operation and financial prospects prior to the Merger in the course of  
18 conducting due diligence. However, despite knowing the poor state of affairs at  
19 Legacy Embark and the heightened risk of future problems, NGA Defendants agreed  
20 to the Merger.

21 54. In breach of their fiduciary duties to the Company, the NGA Defendants  
22 engaged in the Overpayment Misconduct by causing NGA to acquire Legacy Embark  
23 on unfavorable terms despite the fact that, *inter alia*: (i) Legacy Embark had no  
24 patents or significant testing trucks; (ii) Legacy Embark was working with  
25 autonomous driving technology that is highly complex and faced significant  
26 regulatory and technological challenges; and (iii) Legacy Embark had an unproven  
27 business model and limited operating experience.

28 **FALSE AND MISLEADING STATEMENTS**

**July 2, 2021 Registration Statement, Proxy Statement and Prospectus**

55. On July 2, 2021, NGA filed its Registration Statement. The Registration Statement was signed by Defendants Robertson, Manget, Jarratt, Dalglish, Schaefer, and Sparkes.

56. The Registration Statement included a Preliminary Proxy Statement and a prospectus. Defendants Robertson, Manget, Jarratt, Dalglish, Schaefer and Sparkes solicited the preliminary Proxy Statement filed pursuant to Section 14(a) of the Exchange Act, which contained material misstatements and omissions.

57. On August 31, 2021, September 23, 2021 and October 10, 2021, NGA filed amendments to its Registration Statement (the “Amendments to the Form S-4”).

58. The Preliminary Proxy Statement stated the following with regards to the Code of Ethics:

NGA has adopted a code of ethics that applies to all of its executive officers, directors, and employees. The code of ethics codifies the business and ethical principles that govern all aspects of its business.

59. The Preliminary Proxy Statement further stated:

Embark Technology will have a code of ethics that applies to all of its executive officers, directors and employees, including its principal executive officer, principal financial officer, principal accounting officer or controller or persons performing similar functions. The code of ethics will be available on Embark Technology’s website, <http://Embark.com/investors>. Embark Technology intends to make any legally required disclosures regarding amendments to, or waivers of, provisions of its code of ethics on its website rather than by filing a Current Report on Form 8-K.

60. With regards to NGA’s Merger with Legacy Embark, the Preliminary Proxy Statement presented the proposal for the Merger stating that:

1           Proposal No. 1 — The Business Combination Proposal — to  
2 consider and vote upon a proposal to approve and adopt the Agreement  
3 and Plan of Merger, dated as of June 22, 2021 (the “Merger  
4 Agreement”), by and among NGA, NGAB Merger Sub Inc. (“Merger  
5 Sub”), a Delaware corporation and wholly owned subsidiary of NGA  
6 and Embark Trucks Inc. (“Embark”), a Delaware corporation, a copy of  
7 which is attached to this proxy statement/prospectus statement as Annex  
8 A. The Merger Agreement provides for, among other things, the merger  
9 of Merger Sub with and into Embark (the “Merger”), with Embark  
10 surviving the Merger as a wholly owned subsidiary of NGA (following  
11 such date, Embark Technology), in accordance with the terms and  
12 subject to the conditions of the Merger Agreement as more fully  
13 described elsewhere in this proxy statement/prospectus (the “Business  
14 Combination Proposal”)

15       61. The Preliminary Proxy Statement further stated that:

16           After careful consideration, the board of directors of NGA has  
17 unanimously approved the Business Combination and unanimously  
18 recommends that stockholders vote “FOR” adoption of the Merger  
19 Agreement, and approval of the transactions contemplated thereby,  
20 including the Business Combination, and “FOR” all other proposals  
21 presented to NGA’s stockholders in this proxy statement/prospectus.  
22 When you consider the recommendation of these proposals by the board  
23 of directors of NGA, you should keep in mind that NGA’s directors and  
24 officers have interests in the Business Combination that may conflict  
25 with your interests as a stockholder. See the section entitled “Proposal  
26 No. 1—The Business Combination Proposal — Interests of Certain  
27 Persons in the Business Combination” in this proxy statement/prospectus  
28 for a further discussion of these considerations.



1  
2 62. Regarding the redeemable public shares, the Preliminary Proxy  
3 Statement stated: “In addition, pursuant to the NGA Organizational Documents, in  
4 no event will NGA redeem public shares in an amount that would cause NGA’s net  
5 tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange  
6 Act) to be less than \$5,000,001.”

7 63. Defendants Robertson, Manget, Dalglish, Jarratt, Schaefer and Sparkes  
8 caused the Preliminary Proxy Statement to be materially false and misleading, and  
9 failed to disclose material facts necessary to make the statements made not false and  
10 misleading.

11 64. Defendants Robertson, Manget, Dalglish, Jarratt, Schaefer, and Sparkes  
12 caused the Preliminary Proxy Statement to be false and misleading by failing to  
13 disclose that the Code of Ethics was not obeyed as shown by the accounting errors  
14 discussed herein and the fact that the NGA Defendants were engaging in the  
15 Overpayment Misconduct, soliciting the Merger with Legacy Embark without having  
16 conducted adequate due diligence.

17 65. The Preliminary Proxy Statement contained material errors that required  
18 Embark to issue a restatement for such financial statements to be in accordance with  
19 GAAP and failed to disclose that: (i) the impact of the error on the financial statements  
20 as of and for the three and six month periods ended June 30, 2021, or as of and for the  
21 three and nine month periods ended September 30, 2021; (ii) the disclosures failed to  
22 mention that treating this error as a restatement instead of a revision would require  
23 the NGA or its successor company to make adjustments to and the reissuance of the  
24 amounts reflected in the prior financial statements as compared to making a revision  
25 only to the January 15, 2021 financial statements; (iii) the disclosures failed to  
26 mention that NGA violated the GAAP rules surrounding the accounting of temporary  
27 and permanent equity that had been in practice since 2009; and (iv) NGA failed to  
28 maintain adequate internal controls.

1        66. The misleading statements and omissions were not corrected in any of  
2 the Amendments to the Form S-4.

3 **October 19, 2021 Definitive Proxy Statement/Prospectus**

4        67. On October 19, 2021, the definitive proxy statement/prospectus on the  
5 Form 424B3 was filed with the SEC (“Definitive Proxy Statement”), as to the Merger  
6 because the SEC concluded that the redeemable common shares in SPACs should all  
7 be recorded as temporary equity. Defendants Robertson and Rodrigues signed the  
8 Definitive Proxy Statement.

9        68. The Definitive Proxy Statement and the Amendments to the Form S-4  
10 falsely stated that NGA’s condensed statement of changes in stockholders’ equity at  
11 the three and six month periods ended June 30, 2021 had a total stockholder’s equity  
12 balance of \$5,000,005 as of March 31, 2021. However, this was false because the  
13 actual balance was (\$37,455,393), which was restated after adjusting the carrying  
14 amount of stockholders’ equity and reducing it by (\$42,455,398).

15        69. The Definitive Proxy Statement and the Amendments to the Form S-4  
16 falsely stated that NGA’s condensed statement of changes in stockholders’ equity at  
17 the three and six month periods ended June 30, 2021 had a total stockholders’ equity  
18 of \$371,629,911 for the sale of 41,400,000 units, net of underwriting discounts.  
19 However, this was false because the actual total stockholders’ equity was \$0, which  
20 was restated after adjusting the carrying value and reducing it by (\$371,629,911).

21        70. The Definitive Proxy Statement and the Amendments to the Form S-4  
22 falsely stated that NGA’s condensed statement of changes in stockholders’ equity at  
23 the three and six month periods ended June 30, 2021 had a total stockholders’ equity  
24 of (\$365,248,633) for the initial value of common stock subject to redemption.  
25 However, this was false because the actual carrying value was \$0, after a  
26 \$365,248,633 adjustment.

27        71. The Definitive Proxy Statement and the Amendments to the Form S-4  
28 falsely stated that NGA’s condensed statement of changes in stockholders’ equity at

1 the three and six month periods ended June 30, 2021 had a total stockholder's equity  
2 of (\$6,295,969) for the change in value of common stock subject to redemption during  
3 the first quarter of 2021. As restated, there was no need for such an adjustment, and  
4 as such, this line item was reported as \$0.

5 72. The Definitive Proxy Statement and the Amendments to the Form S-4  
6 failed to mention the accretion for common stock to redemption amount as of March  
7 31, 2021 in NGA's Condensed Statement of Changes in Stockholders' Equity at the  
8 three and six month periods ended June 30, 2021. However, the Company's  
9 accounting errors required the Company to adjust this period, which it did in the  
10 restatement and adjusted the amount by (\$42,359,126) to the new balance of  
11 (\$42,359,126).

12 73. The Definitive Proxy Statement and the Amendments to the Form S-4  
13 falsely stated that NGA's condensed statement of changes in stockholders' equity at  
14 the three and six month periods ended June 30, 2021 had a total stockholder's equity  
15 of (\$42,455,398) for the change in value of common stock subject to redemption  
16 during the second quarter of 2021. As restated, however, there was no need for such  
17 an adjustment; therefore, this line item was reported as \$0.

18 74. The Definitive Proxy Statement and the Amendments to the Form S-4  
19 falsely stated that NGA's Condensed Statement of Cash Flows for the six month  
20 period ended June 30, 2021 had \$365,248,633 in initial classification of common  
21 stock subject to possible redemption. As restated, however, it was \$414,000,000 after  
22 a \$48,751,367 adjustment to correct the carrying value of such common stock.

23 75. The Definitive Proxy Statement and the Amendments to the Form S-4  
24 falsely stated that NGA's Condensed Statement of Cash Flows for the six month  
25 period ended June 30, 2021 had \$48,751,367 change in value of common stock  
26 subject to redemption. However, this was false because the actual value was \$0 after  
27 adjusting it for (\$48,71,367).

28

1           76. The Definitive Proxy Statement and the Amendments to the Form S-4  
2 falsely stated that “basic and diluted net income per share, Common Stock subject to  
3 redemption” as of and for the three and six month periods ended June 30, 2021 in  
4 NGA’s Condensed Statements of Operations as (\$0.84) and (\$0.51), respectively.  
5 However, that was false because the Company corrected it in the restatement to  
6 (\$0.24) and (\$0.15), respectively.

7           77. The Definitive Proxy Statement and the Amendments to the Form S-4  
8 falsely stated that “basic and diluted weighted average shares outstanding, Common  
9 stock subject to redemption” as of and for the three and six month periods ended June  
10 30, 2021 in NGA’s Condensed Statements of Operations as 37,153,752 and  
11 61,945,851, respectively. However, this was false because the actual values were  
12 41,400,000 and 37,969,061, respectively.

13           78. The Definitive Proxy Statement and the Amendments to the Form S-4  
14 falsely stated that “basic and diluted net income per share, Non-redeemable common  
15 stock” as of and for the three and six month periods ended June 30, 2021 in NGA’s  
16 Condensed Statements of Operations as (\$0.84) and (\$0.51), respectively. However,  
17 this was false because the actual restated amounts were (\$0.24) and (\$0.15),  
18 respectively.

19           79. The Definitive Proxy Statement and the Amendments to the Form S-4  
20 falsely stated that “basic and diluted weighted average shares outstanding, Non-  
21 redeemable common stock” as of and for the three and six month periods ended June  
22 30, 2021 in NGA’s Condensed Statements of Operations as 14,596,248 and  
23 14,393,060, respectively. However, this was false because the actual restated  
24 amounts were 10,350,000 and 10,238,122, respectively.

25           80. These statements were not only false and/or misleading but they failed  
26 to disclose that: (i) the impact of the error on the financial statements as of and for the  
27 three and six month periods ended June 30, 2021, or as of and for the three and nine  
28 month periods ended September 30, 2021; (ii) the disclosures failed to mention that

1 treating this error as a restatement instead of a revision would require NGA or its  
 2 successor company Embark to make adjustments to the amounts reflected in the prior  
 3 financial statements as compared to making a revision only to the January 15, 2021  
 4 financial statements; (iii) the disclosures failed to mention that NGA violated the  
 5 GAAP rules surrounding the accounting of temporary and permanent equity that had  
 6 been in practice since 2009; and (iv) NGA and its successor Embark failed to maintain  
 7 adequate internal controls. As a result, the aforesaid public statements were  
 8 materially false and misleading at all relevant times.

9 81. The Definitive Proxy Statement was also false and misleading for the  
 10 same reasons mentioned as to the Preliminary Proxy Statement because both of the  
 11 statements have the same false information.

12 82. The condensed financial statements as of June 30, 2020 were included in  
 13 the Definitive Proxy Statement and in the Amendments to the Form S-4, which stated:

NORTHERN GENESIS ACQUISITION CORP. II CONDENSED BALANCE SHEETS		
	June 30, 2021 (Unaudited)	December 31, 2020
<b>ASSETS</b>		
Current assets		
Cash	\$ 296,271	\$ —
Prepaid expenses and other current assets	208,263	—
Total Current Assets	504,534	—
Deferred offering costs	—	249,917
Marketable securities held in Trust Account	414,023,366	—
<b>TOTAL ASSETS</b>	<b>\$414,527,900</b>	<b>\$249,917</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities		
Accrued expenses	\$ 640,600	\$ 1,450
Accrued offering costs	—	107,000
Promissory note — related party	—	117,917
Total Current Liabilities	640,600	226,367
FPA liability	1,106,667	—
Warrant liability	34,956,801	—
Deferred underwriting fee payable	14,490,000	—
<b>Total Liabilities</b>	<b>\$1,194,068</b>	<b>226,367</b>
<b>Commitments</b>		
Common stock subject to possible redemption 41,400,000 and -0- shares at redemption value at June 30, 2021 and December 31, 2020, respectively	414,000,000	—
<b>Stockholders' Equity</b>		
Preferred stock, \$0.0001 par value; 1,000,000 shares authorized; none issued or outstanding	—	—
Common stock, \$0.0001 par value; 100,000,000 shares authorized; 15,805,951 and 10,350,000 shares issued and outstanding (excluding 35,944,049 and no shares subject to possible redemption) at June 30, 2021 and December 31, 2020, respectively	1,035	1,035
Additional paid-in capital	—	23,965
Accumulated deficit	(50,667,203)	(1,450)

**NORTHERN GENESIS ACQUISITION CORP. II**  
**CONDENSED STATEMENTS OF OPERATIONS**  
**(UNAUDITED)**

	Three Months Ended June 30, 2021	Six Months Ended June 30, 2021
Operating and formation costs	\$ 1,261,199	\$ 2,873,957
Loss from operations	(1,261,199)	(2,873,957)
Other expense:		
Change in fair value of warrant liability	(10,857,934)	(4,373,334)
Change in fair value of FPA liability	(140,000)	(140,000)
Loss on initial issuance of private warrants	—	(267,467)
Offering costs allocated to warrant and FPA liabilities	—	(1,148,289)
Interest earned on marketable securities held in Trust Account	15,025	23,366
Other expense, net	(10,982,909)	(5,905,724)
Loss before income taxes	(12,244,108)	(7,363,925)
Benefit (provision) for income taxes	—	—
Net loss	\$(12,244,108)	\$(7,363,925)
Basic and diluted weighted average shares outstanding, Common stock subject to redemption	37,153,752	61,945,851
Basic and diluted net income per share, Common stock subject to redemption	\$ 0.00	\$ 0.00
Basic and diluted weighted average shares outstanding, Non-redeemable common stock	14,596,248	14,393,060
Basic and diluted net income per share, Non-redeemable common stock	\$ (0.84)	\$ (0.51)



**NORTHERN GENESIS ACQUISITION CORP. II**  
**CONDENSED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY**  
**THREE AND SIX MONTHS ENDED JUNE 30, 2021**  
**(UNAUDITED)**

	Common Stock		Additional Paid-in Capital	Retained Earnings / (Accumulated Deficit)	Total Stockholders' Equity
	Shares	Amount			
<b>Balance — January 1, 2021</b>	<b>10,350,000</b>	<b>\$ 1,035</b>	<b>\$ 23,965</b>	<b>\$ (1,450)</b>	<b>\$ 23,550</b>
Sale of 41,400,000 Units, net of underwriting discounts	41,400,000	4,140	371,625,771	—	371,629,911
Sale of 6,686,667 Private Placement Warrants	—	—	10,963	—	10,963
Common stock subject to possible redemption	(36,524,863)	(3,652)	(365,244,981)	—	(365,248,633)
Change in value of common stock subject to redemption	(628,889)	(63)	(6,295,906)	—	(6,295,969)
Net Income	—	—	—	4,880,183	4,880,183
<b>Balance — March 31, 2021</b>	<b>14,596,248</b>	<b>\$ 1,460</b>	<b>\$ 119,812</b>	<b>\$ 4,878,733</b>	<b>\$ 5,000,005</b>
Change in value of common stock subject to redemption	(4,246,248)	(425)	(119,812)	(42,335,161)	(42,455,398)
Initial classification of FPA liability	—	—	—	(966,667)	(966,667)
Net Loss	—	—	—	(12,244,108)	(12,244,108)
<b>Balance — June 30, 2021</b>	<b>10,350,000</b>	<b>\$ 1,035</b>	<b>\$ —</b>	<b>\$ (50,667,203)</b>	<b>\$ (50,666,168)</b>



**NORTHERN GENESIS ACQUISITION CORP. II**  
**CONDENSED STATEMENT OF CASH FLOWS**  
**SIX MONTHS ENDED JUNE 30, 2021**  
**(UNAUDITED)**

<b>Cash Flows from Operating Activities:</b>	
Net loss	\$ (7,363,925)
Adjustments to reconcile net loss to net cash used in operating activities:	
Interest earned on marketable securities held in Trust Account	(23,366)
Changes in fair value of warrant liability	4,373,334
Change in fair value of FPA liability	140,000
Loss on initial issuance of private warrants	267,467
Offering costs allocable to warrant liabilities	1,148,289
Changes in operating assets and liabilities:	
Prepaid expenses and other current assets	(208,263)
Accrued expenses	639,150
Net cash used in operating activities	<u>(1,027,314)</u>
<b>Cash Flows from Investing Activities:</b>	
Investment of cash in Trust Account	(414,000,000)
Net cash used in investing activities	<u>(414,000,000)</u>
<b>Cash Flows from Financing Activities:</b>	
Proceeds from sale of Units, net of underwriting discounts paid	405,720,000
Proceeds from sale of Private Placement Warrants	10,030,000
Repayment of promissory note — related party	(117,917)
Payment of offering costs	(308,498)
Net cash provided by financing activities	<u>415,323,585</u>
<b>Net Change in Cash</b>	<b>296,271</b>
Cash — Beginning of period	—
Cash — End of period	<u>\$ 296,271</u>
<b>Non-Cash investing and financing activities:</b>	
Initial classification of common stock subject to possible redemption	\$ 365,248,633
Change in value of common stock subject to possible redemption	\$ 48,751,367
Initial Classification of Warrant Liabilities	\$ 30,583,467
Deferred underwriting fee payable	<u>\$ 14,490,000</u>

**THE 2022 PROXY STATEMENT**

**Defendant Robertson**

1           83. The 2022 Proxy Statement stated the following regarding Defendant  
2 Robertson:

3                 ***Ian Robertson*** has served on our board since November 2021.  
4 One of NGA's founders, Mr. Robertson has served as its Chief Executive  
5 Officer and a member of its Board of Directors since its formation. He  
6 also served as the Vice Chair of the Board of Directors of Northern  
7 Genesis Acquisition I from June 2020 until consummation of its initial  
8 business combination in May 2021 and has served as Chief Executive  
9 Officer and a member of the Board of Directors of Northern Genesis  
10 Acquisition III since its formation in January 2021. Mr. Robertson is an  
11 active senior business professional and currently leads Northern Genesis  
12 Capital Corp., an infrastructure investment fund management company.  
13 In July 2021, he was appointed Co-Chair of the Board of Directors of  
14 Largo Resources Ltd. (TSX: LGO) (NASDAQ: LGO) and interim  
15 President of Largo Clean Energy Corp., a subsidiary of Largo Resources  
16 Ltd. Mr. Robertson co-founded APCI in 1988 and previously served as  
17 Chief Executive Officer and Director of Algonquin Power & Utilities  
18 Corp. from October 2009 through July 2020. During his leadership  
19 tenure, Algonquin grew to become one of Canada's largest power and  
20 utilities companies, serving regulated electricity, natural gas and water  
21 utility customers in the United States and Canada and owning and  
22 operating a large portfolio of global renewable wind and solar powered  
23 generation capacity. He has more than 30 years of experience in the  
24 origination and execution of global infrastructure investment initiatives  
25 and is committed to the concept of sustainable investing. Mr. Robertson  
26 previously served on the Board of Directors of Atlantica Sustainable  
27 Infrastructure plc (NASDAQ: AY), a publicly listed affiliate of  
28 Algonquin traded on the NASDAQ exchange.

1 Mr. Robertson received an electrical engineering degree from the  
2 University of Waterloo, a Master of Business Administration from York  
3 University, and a Master of Law from the Law School of the University  
4 of Toronto. He is a professional engineer and holds a Chartered Financial  
5 Analyst designation.

6 Skills and Qualifications: We believe Mr. Robertson is well-  
7 qualified to serve on our board of directors due to his business experience  
8 and contacts and relationships.

9 **Defendant Manget**

10 84. The 2022 Proxy Statement stated the following regarding Defendant  
11 Manget:

12 The reporting person is a member of and holds a non-controlling  
13 interest in the Issuer's sponsor, Northern Genesis Sponsor II LLC (the  
14 "Sponsor"), which beneficially owns 10,350,000 shares of common  
15 stock ("Founder Shares") and will beneficially own 5,966,667 warrants  
16 (or up to 6,686,667 warrants if the underwriters in the Issuer's initial  
17 public offering exercise their overallotment option in full), each warrant  
18 entitling the holder to purchase one share of common stock at a price of  
19 \$11.50 per share, subject to adjustment.

20 85. According to NGA's Registration Statement:

21 ***Ken Manget***, one of our founders, has served as our Chief  
22 Financial Officer since June 2020. From 2014 to 2019, Mr. Manget  
23 served as Global Head, Relationship Investing at the Ontario Teachers'  
24 Pension Plan where he ran teams in Hong Kong, London and Toronto,  
25 and was responsible for a diversified portfolio of pre-IPO, public and  
26 private equity investments. After leaving Ontario Teachers' Pension  
27 Plan, he has been active as a private investor and director of companies.  
28 From 2009 to 2014, Mr. Manget served as Head of Investment Banking

1 at Desjardins Capital Markets. He started his career at Schlumberger,  
2 Inc. as a Field Engineer in Latin America. His finance background  
3 includes positions at: Salomon Brothers in London and New York (from  
4 1986 to 1988), and at BMO Capital Markets in Toronto (from 1992 to  
5 2009) where he had exposure to a broad range of capital  
6 markets/investment banking activities including: mergers &  
7 acquisitions, equities, fixed income, derivatives and securitization. Mr.  
8 Manget is a past board member of St. Joseph's Health Centre  
9 Foundation, the Heart and Stroke Foundation, is currently a member of  
10 the Board of the Canadian Ditchley Foundation, and serves an alumnus  
11 volunteer for Harvard University. He also currently serves on the Board  
12 of NASDAQ listed Organigram Holdings Inc. (NASDAQ: OIG) where  
13 he is a member of the audit, compensation and investment committees.  
14 He holds a Mechanical Engineering degree from the University of  
15 Toronto, a M.B.A from the Harvard Business School, and an ICD.D  
16 designation granted by the Institute of Corporate Directors, at the  
17 University of Toronto.

18 **Defendant Jarratt**

19 86. The 2022 Proxy Statement stated the following regarding Defendant  
20 Jarratt:

21 The reporting person is a member of and holds a non-controlling  
22 interest in the Issuer's sponsor, Northern Genesis Sponsor II LLC (the  
23 "Sponsor"), which beneficially owns 10,350,000 shares of common  
24 stock ("Founder Shares") and will beneficially own 5,966,667 warrants  
25 (or up to 6,686,667 warrants if the underwriters in the Issuer's initial  
26 public offering exercise their overallotment option in full), each warrant  
27 entitling the holder to purchase one share of common stock at a price of  
28 \$11.50 per share, subject to adjustment.

1           87. According to NGA's Registration Statement:

2                 **Christopher Jarratt**, one of our founders, has served as a member  
3 of our board of directors and our Non-Executive Chairman since June  
4 2020. Mr. Jarratt is an active senior business professional. In 1988, he  
5 co-founded APCI, a private independent power developer formed in  
6 1988 which was the predecessor organization to Algonquin Power &  
7 Utilities Corp. (TSX: AQN and NYSE: AQN), a publicly listed company  
8 traded on the TSX and NYSE, and has served as Executive Vice Chair  
9 for Algonquin Power & Utilities Corp. since October 2009. Mr. Jarratt  
10 brings more than 30 years of experience in the origination, development  
11 and operations of global infrastructure investment initiatives and is  
12 committed to the concept of best of class governance and sustainable  
13 investing. Mr. Jarratt currently serves on the Board of Directors of  
14 Atlantica Sustainable Infrastructure plc (formerly Atlantica Yield plc).  
15 Mr. Jarratt is a professional engineer and holds an engineering degree  
16 specializing in water resources from the University of Guelph. In  
17 addition, Mr. Jarratt holds the designation of Chartered Director from  
18 McMaster University. We believe Mr. Jarratt is well-qualified to serve  
19 on our board of directors due to his business experience and contacts and  
20 relationships.

21 **Defendant Dalglish**

22           88. The 2022 Proxy Statement stated the following regarding Defendant  
23 Dalglish:

24                 The reporting person is a member of and holds a non-controlling  
25 interest in the Issuer's sponsor, Northern Genesis Sponsor II LLC (the  
26 "Sponsor"), which beneficially owns 10,350,000 shares of common  
27 stock ("Founder Shares") and will beneficially own 5,966,667 warrants  
28 (or up to 6,686,667 warrants if the underwriters in the Issuer's initial

1 public offering exercise their overallotment option in full), each warrant  
2 entitling the holder to purchase one share of common stock at a price of  
3 \$11.50 per share, subject to adjustment.

4 89. According to NGA's Registration Statement:

5 *Paul Dalglish*, one of our founders, has served as a member of our  
6 board of directors since June 2020. Mr. Dalglish is an experienced  
7 operations and information technology executive, specializing in the  
8 design and delivery of systems providing operational excellence. Mr.  
9 Dalglish brings global experience in the delivery of technology-enabled  
10 transformations with global clients and has led large global employee  
11 and contractor teams. He has led business development and contract  
12 negotiation teams for large outsourcing contracts. Since June 2019, Mr.  
13 Dalglish has served as Vice President of Operations for JANA  
14 Corporation, a utility services company providing risk assessment  
15 programs to the North American natural gas industry. From 2016 to  
16 August 2019, Mr. Dalglish served as President of Hibernia Solutions  
17 Inc., a provider of pre- and post-acquisition support to utilities and utility  
18 related companies. From 2008 to 2015, Mr. Dalglish was with Serco  
19 Canada Inc., a multi-national government outsourcing company, initially  
20 serving as a Director of its subsidiary Serco-DES Inc. and later serving  
21 as its President. Previously, Mr. Dalglish focused on the acquisition and  
22 integration of new businesses on behalf of Accenture's utility  
23 outsourcing business.

24 Mr. Dalglish previously served on the Board of Directors and  
25 Audit Committee for AirSource Power Fund I LP, a publicly listed  
26 renewable energy company and currently sits on the Boards of several  
27 not-for-profit organizations. Mr. Dalglish has been accredited as a  
28 Chartered Director by McMaster University, holds a Professional



1 Engineer designation through his Bachelor of Science from the  
2 University of Waterloo and has been awarded a Master of Business  
3 Administration from the University of Western Ontario. We believe Mr.  
4 Dalglish is well-qualified to serve on our board of directors due to his  
5 business experience and contacts and relationships.

6 **Defendant Schaefer**

7 90. The 2022 Proxy Statement stated the following regarding Defendant  
8 Schaefer:

9 The reporting person is a member of and holds a non-controlling  
10 interest in the Issuer's sponsor, Northern Genesis Sponsor II LLC (the  
11 "Sponsor"), which beneficially owns 10,350,000 shares of common  
12 stock ("Founder Shares") and will beneficially own 5,966,667 warrants  
13 (or up to 6,686,667 warrants if the underwriters in the Issuer's initial  
14 public offering exercise their overallotment option in full), each warrant  
15 entitling the holder to purchase one share of common stock at a price of  
16 \$11.50 per share, subject to adjustment.

17 91. According to NGA's Registration Statement:

18 ***Robert Schaefer***, one of our founders, has served as a member of  
19 our board of directors since July 2020. Mr. Schaefer is an active business  
20 professional. Since 2017, he has served as the Executive Vice President  
21 and Chief Financial Officer for the Ascendant Group Limited, the parent  
22 of Bermuda Electric Company. Mr. Schaefer is an executive with a track  
23 record of repositioning and growing businesses through his experience  
24 leading business units, undertaking mergers and acquisitions and  
25 completing finance transactions in Bermuda, Canada, U.S. and Europe.  
26 Mr. Schaefer has been responsible for significant capital deployment in  
27 growth investments, negotiation of long-term contract restructurings and  
28 company sales and acquisitions. From 2015 to 2017, Mr. Schaefer led



1 the strategic restructuring of Maxim Power Corp. including the  
2 successful divestiture of European and US power businesses. From 2008  
3 through 2015, Mr. Schaefer was responsible for TransAlta Corporation's  
4 energy marketing business unit and business development activities. Mr.  
5 Schaefer holds a Bachelors of Commerce from the University of Calgary  
6 and is a member of the Institute of Chartered Accountants of Alberta and  
7 Bermuda. We believe Mr. Schaefer is well-qualified to serve on our  
8 board of directors due to his business experience and contacts and  
9 relationships.

10 **Defendant Sparkes**

11 92. The 2022 Proxy Statement stated the following regarding Defendant  
12 Sparkes:

13 The reporting person is a member of and holds a non-controlling  
14 interest in the Issuer's sponsor, Northern Genesis Sponsor II LLC (the  
15 "Sponsor"), which beneficially owns 10,350,000 shares of common  
16 stock ("Founder Shares") and will beneficially own 5,966,667 warrants  
17 (or up to 6,686,667 warrants if the underwriters in the Issuer's initial  
18 public offering exercise their overallotment option in full), each warrant  
19 entitling the holder to purchase one share of common stock at a price of  
20 \$11.50 per share, subject to adjustment.

21 93. According to NGA's Registration Statement:

22 ***Brad Sparkes***, one of our founders, has served as a member of our  
23 board of directors since June 2020. Mr. Sparkes is an active senior  
24 business professional. He co-founded and has served as President and  
25 Chief Executive Officer for BowArk Energy Ltd, a wind energy  
26 developer, since September 2003. Since its inception, BowArk has  
27 successfully developed a number of renewable energy projects across  
28 Canada. Mr. Sparkes previously held the position of Chief Financial

1 Officer and Director for AirSource Power Fund LP which successfully  
2 completed the construction of the St. Leon Wind Energy Facility. Prior  
3 to BowArk, Mr. Sparkes gained extensive experience in developing and  
4 financing power projects across North America. From 2000 to 2003, Mr.  
5 Sparkes was Director of Business Development of Calpine Canada  
6 where he led its acquisitions and development team focusing on the  
7 natural gas-fired energy sector successfully developing and financing a  
8 number of projects in the North American energy sector. Prior to joining  
9 Calpine, he was a member of TransAlta Energy Corporation's business  
10 development team from 1996 to 2000, also focusing on natural gas fired  
11 energy sector in Canada. Mr. Sparkes holds an Engineering degree from  
12 the University of Calgary. We believe Mr. Sparkes is well-qualified to  
13 serve on our board of directors due to his business experience and  
14 contacts and relationships.

15 **Defendant Rodrigues**

16 94. The 2022 Proxy Statement stated the following regarding Defendant  
17 Rodrigues:

18 *Alex Rodrigues* co-founded Embark and has served as our Chief  
19 Executive Officer since the company's founding in 2016. Mr. Rodrigues  
20 has an extensive background in robotics, beginning with a world robotics  
21 championship win as a middle school student in 2009. Mr. Rodrigues  
22 studied at the University of Waterloo, where he built Canada's first self-  
23 driving vehicle, a golf cart that was used to take guests on tours of the  
24 campus. Mr. Rodrigues is a 2016 Thiel Fellowship recipient and was  
25 accepted into Silicon Valley startup incubator Y-Combinator, where he  
26 launched Embark. Under Mr. Rodrigues's tenure as Chief Executive  
27 Officer, Embark has achieved a number of industry firsts as it  
28 commercializes autonomous freight: Embark was the first self-driving

1 truck company to achieve an autonomous coast-to-coast drive, the first  
2 to reach 100,000 miles driven on public roads, and the first to open  
3 transfer points.

4 **Skills and Qualifications:** We believe that Mr. Rodrigues is  
5 highly-qualified to serve as a member of our board of directors due to his  
6 longtime leadership of our company, deep business experience in the  
7 autonomous trucking sector, and technical expertise in robotics.

8 **Defendant Hawwa**

9 95. The 2022 Proxy Statement stated the following about Defendant Hawwa:

10 ***Richard Hawwa*** has served as our Chief Financial Officer since  
11 May 2021.<sup>b</sup> Mr. Hawwa has more than 15 years of investment banking  
12 experience. Prior to joining us, Mr. Hawwa most recently served as a  
13 Managing Director at Citigroup, responsible for coverage of a variety of  
14 industrial and technology companies across the global mobility sector.  
15 Mr. Hawwa began his career as an analyst in the investment banking  
16 division at UBS. Throughout his career, Mr. Hawwa's primary  
17 responsibilities included working with companies assisting on capital  
18 raising transactions and advising on strategic matters. Prior to assuming  
19 mobility sector coverage responsibility, Mr. Hawwa specialized in  
20 M&A, working across a diverse set of disruptive and traditional sectors,  
21 including biotechnology, medical device technology, financial  
22 technology, diversified industrials and energy. Mr. Hawwa has advised  
23 and assisted on a variety of complex transactions with an aggregate  
24 transaction value of more than \$125 billion in North America, Europe  
25 and Asia. Mr. Hawwa graduated in three years with honors from  
26 Southern Methodist University with a Bachelor of Business  
27 Administration in Finance and a minor in Economics.

28

1 **Defendant Chao**

2 96. The 2022 Proxy Statement stated the following about Defendant Chao:

3 *Secretary Elaine Chao* has served on our board since November  
4 2021 and has also served as a member of Embark Trucks Inc.'s board of  
5 directors from June 2021. Secretary Chao is the former U. S. Secretary  
6 of Labor and the former U.S. Secretary of Transportation. She is the first  
7 Asian Pacific American woman to be appointed to a President's cabinet  
8 in American history. Prior to being appointed Secretary of Labor, she  
9 was President and CEO of United Way of America, Director of the Peace  
10 Corps, Deputy Secretary of U.S. Department of Transportation, Chair of  
11 the Federal Commission. She has also worked in the private sector as  
12 vice president of Syndications for BankAmerica Capital Markets Group  
13 and Citibank. Secretary Chao has also been a director on a number of  
14 Fortune 100 public and nonprofit boards. She is recipient of 37 honorary  
15 doctorate degrees. Secretary Chao has a MBA from Harvard Business  
16 School.

17 **Skills and Qualifications:** We believe Secretary Chao's extensive  
18 leadership experience in high profile positions at large, complex  
19 organizations in the public, private and non-profit sectors brings valuable  
20 perspective to matters relevant to the Company in the areas of global  
21 competitiveness, international geopolitical dynamics, workforce  
22 development, trends in governmental policies and corporate governance.  
23 In particular, Secretary Chao's service as U.S. Secretary of  
24 Transportation provides extensive knowledge and experience regarding  
25 safety, and the importance of innovation and infrastructure in our  
26 nation's economic competitiveness. Her service as U.S. Secretary of  
27 Labor provides extensive knowledge and experience regarding labor and  
28 employment trends, workforce health and safety, pension benefits and

1 competition in a worldwide economy. Secretary Chao's ongoing board  
2 memberships in the financial and communications industries also  
3 provide further insight into finance, macroeconomics and new media  
4 developments.

5 **Defendant Grady**

6 97. The 2022 Proxy Statement stated the following about Defendant Grady:

7 *Pat Grady* has served on our board since November 2021 and has  
8 also served as a member of Embark Truck Inc.'s board of directors from  
9 May 2018. Mr. Grady currently serves as a Partner at Sequoia Capital,  
10 which he joined in 2007, and is responsible for Sequoia Capital's  
11 growth-stage investment business. Mr. Grady is an active senior business  
12 professional, and currently serves as a director of multiple companies,  
13 including, Amplitude, Attentive, Cribl, Drift, Namely, Okta (OKTA),  
14 and Pilot. These ongoing memberships provide insight into the enterprise  
15 technology and financial services industry and developments. During his  
16 career, he has also worked with companies such as HubSpot (HUBS),  
17 Jive Software, MarkLogic, Medallia (MDLA), OpenDNS, Qualtrics  
18 (XM), ServiceNow (NOW), Snowflake (SNOW), Sumo Logic (SUMO),  
19 Sunrun (RUN), and Zoom (ZM), among others. Mr. Grady received a  
20 Bachelor of Science degree from Boston College.

21 **Skills and Qualifications:** We believe Mr. Grady is well-  
22 qualified to serve on our board of directors due to his extensive  
23 experience in working with and serving at the boards of growth-stage  
24 businesses.

25 **Defendant Moak**

26 98. The 2022 Proxy Statement said the following about Defendant Moak:

27 *Brandon Moak* co-founded Embark and has served as our Chief  
28 Technology Officer since the company's founding in 2016. In his role,

1 he leads engineering and R&D at our company, and has overseen  
2 development of the Embark Driver software, the core of Embark's  
3 commercialization effort. Mr. Moak has also led the design and  
4 development of the Embark Universal Interface, a first-of-its-kind set of  
5 standardized self-driving components and flexible interfaces necessary  
6 for major truck OEMs to more easily and robustly integrate Embark's  
7 autonomous technology onto their vehicle platforms. Mr. Moak  
8 previously worked as a robotics engineer and a software developer,  
9 respectively, at technology companies Kindred.ai and Clear Blue  
10 Technologies. Mr. Moak is an alumnus of the University of Waterloo  
11 where he studied mechatronics engineering. Mr. Moak has served on our  
12 board of directors since our inception and will continue in this role.

13 **Skills and Qualifications:** We believe Mr. Moak is highly-  
14 qualified to serve as a member of our board of directors due to his  
15 longtime leadership of research and development at the company, deep  
16 business experience in the autonomous trucking sector, and technical  
17 expertise in robotics.

#### 18 **THE THRUTH IS REVEALED**

19 99. On November 9, 2021, the Company held a special meeting where the  
20 NGA shareholders approved the Merger.

#### 21 **November 10, 2021, Form 10-Q**

22 100. On November 10, 2021, Embark filed its third quarter 2021 financial  
23 statements ("3Q21"). The 3Q21 was signed by Defendant Robertson and Manget,  
24 and contained SOX certifications signed by Defendants Robertson and Manget  
25 attesting to the accuracy of the financial statements contained therein, the disclosure  
26 of any material changes to the Company's internal controls, and the disclosure of any  
27 fraud committed by the Company, its officers, or its directors.

28

1           101. In the 3Q21, the Company disclosed the accounting error related to  
2 temporary equity versus permanent equity. Note 2 of the 3Q21 stated:

3                   NOTE 2. REVISION OF PREVIOUSLY ISSUED FINANCIAL  
4 STATEMENTS

5           In connection with the preparation of the Company's financial  
6 statements as of September 30, 2021, management identified errors made  
7 in its historical financial statements where, at the closing of the  
8 Company's Initial Public Offering, the Company improperly valued its  
9 Common stock subject to possible redemption. The Company previously  
10 determined the Common stock subject to possible redemption to be equal  
11 to the redemption value of \$10.00 per share of Common stock while also  
12 taking into consideration a redemption cannot result in net tangible assets  
13 being less than \$5,000,001. Management determined that the Common  
14 stock issued during the Initial Public Offering can be redeemed or  
15 become redeemable subject to the occurrence of future events considered  
16 outside the Company's control. Therefore, management concluded that  
17 the redemption value should include all shares of Common stock subject  
18 to possible redemption, resulting in the Common stock subject to  
19 possible redemption being equal to their redemption value. As a result,  
20 management has noted a reclassification error related to temporary  
21 equity and permanent equity. This resulted in an adjustment to the initial  
22 carrying value of the Common stock subject to possible redemption with  
23 the offset recorded to additional paid-in capital (to the extent available),  
24 accumulated deficit and Common stock. However, the reclassification  
25 error was significantly major than what the company presented it to be.

26           102. This disclosure failed to address that the error would require the  
27 Company to restate the amounts disclosed in its previous financial statements as  
28 opposed to making only a revision to the January 15, 2021 financial statement.



1           103. This disclosure also failed to address the fact that the Company violated  
2 GAAP rules in place since 2009 and which were know or should have been known to  
3 the Individual Defendants.

4           104. The statements referenced above were materially false and misleading  
5 because there were material errors that required Embark to now issue a restatement  
6 for its financial statements to be in accordance with GAAP and Defendants failed to  
7 disclose that: (i) the impact of the error on the Company's financials as of and for the  
8 three and six month ended June 30, 2021, or as of and for the three and nine months  
9 ended September 30, 2021; (ii) the disclosures failed to mention that treating this error  
10 as a restatement instead of a revision would require the Company to make adjustments  
11 to and the reissuance of the amounts reflected in the prior financial statements as  
12 compared to making a revision only to the January 15, 2021 financial statements; (iii)  
13 the disclosures failed to mention that the Company violated the GAAP rules  
14 surrounding the accounting of temporary and permanent equity that had been in  
15 practice since 2009; and (iv) the Company failed to maintain adequate internal  
16 controls. As a result, Embark's public statements were materially false and  
17 misleading at all relevant times

18 **November 17, 2021, Form 8-K**

19           105. On November 17, 2021, the Company filed a November 2021 8-K. The  
20 November 2021 8-K disclosed that Company's "audited balance sheet as of January  
21 15, 2021 and the Company's unaudited financial statements as of March 31, 2021 and  
22 for the three months ended March 31, 2021 should no longer be relied upon."

23           106. The Company admitted those statements are unreliable because of the  
24 reclassification of all the Company's public shares as temporary equity.

25                   Item 4.02. Non-Reliance on Previously Issued Financial  
26 Statements or a Related Audit Report or Completed Interim Review.

27                   On November 12, 2021, the management of Embark Technology,  
28 Inc. ... became aware that the Chief Accountant's Office of the

1 Securities and Exchange Commission's ("SEC") Division of  
2 Corporation Finance had determined that the redeemable common shares  
3 should all be recorded as temporary equity.... The Company had  
4 previously classified a portion of the Public Shares in permanent equity  
5 because the Company's amended and restated certificate of  
6 incorporation provided that the Company will not redeem the Public  
7 Shares in an amount that would cause its net tangible assets to be less  
8 than \$5,000,001. Notwithstanding the provision in the amended and  
9 restated certificate of incorporation requiring a minimum net tangible  
10 asset amount, based on the re-evaluation discussed above, the  
11 Company's management determined that, in accordance with the ASC  
12 480, redemption provisions not solely within the control of the Company  
13 would require common stock subject to redemption to be classified  
14 outside of permanent equity and therefore all of the Public Shares subject  
15 to redemption should be classified outside of permanent equity.

16 On November 17, 2021, the audit committee of the board of  
17 directors of the Company concluded, after discussion with the  
18 Company's management, that (i) the Company's audited balance sheet  
19 as of January 15, 2021 included as Exhibit 99.1 to the Company's  
20 Current Report on Form 8-K filed with the SEC on January 22, 2021 and  
21 (ii) the Company's unaudited financial statements as of March 31, 2021  
22 and for the three months ended March 31, 2021 contained in the  
23 Company's Quarterly Report on Form 10-Q filed with the SEC on May  
24 26, 2021, should no longer be relied upon due to the reclassification of  
25 all of the Company's Public Shares as temporary equity.

26 The tables below present sections of (i) the balance sheets as of  
27 January 15, 2021 and March 31, 2021, (ii) the statement of operations  
28 for the three months ended March 31, 2021 and (iii) the statement of cash

flows for the three months ended March 31, 2021, in each case, as reported, adjusted for the change in accounting treatment and the restated financial statements reflecting those adjustments.

Balance Sheet as of January 15, 2021

	As Reported	Adjustments	Restated
Shares Subject to Redemption	\$ 365,248,633	\$ 48,751,367	\$ 414,000,000
Class A Common Stock	1,523	(488)	1,035
Additional Paid in Capital	6,415,718	(6,415,718)	-
(Accumulated Deficit) Retained Earnings	(1,417,236)	(42,335,161)	(43,752,397)
Total Stockholders' Equity	5,000,005	(48,751,367)	(43,751,362)
Number of shares subject to redemption	36,524,863	4,875,137	41,400,000

2

Balance Sheet as of March 31, 2021

	As Reported	Adjustments	Restated
Shares Subject to Redemption	\$ 371,544,602	\$ 42,455,398	\$ 414,000,000
Class A Common Stock	1,460	(425)	1,035
Additional Paid in Capital	119,812	(119,812)	-
(Accumulated Deficit) Retained Earnings	4,878,733	(42,335,161)	(37,456,428)
Total Stockholders' Equity	5,000,005	(42,455,398)	(37,455,393)
Number of shares subject to redemption	37,153,752	4,246,248	41,400,000

Statement of Operations for the three months March 31, 2021

	As Reported	Adjustments	Restated
Weighted average shares outstanding - redeemable	36,524,863	(2,024,863)	34,500,000
Basic and Diluted EPS - redeemable	\$ -	\$ 0.11	\$ 0.11
Weighted average shares outstanding - non-redeemable	14,187,614	(4,062,614)	10,125,000
Basic and Diluted EPS - non-redeemable	\$ 0.34	\$ (0.23)	\$ 0.11

Statement of Cash Flows for the three months March 31, 2021

	As Reported	Adjustments	Restated
Initial classification of common stock subject to redemption	\$ 365,248,633	\$ 48,751,367	\$ 414,000,000
Change in value of common stock subject to redemption	6,295,969	(6,295,969)	-

The Company reflected the adjustments to the Company's financial statements as of January 15, 2021 in Note 2 of the financial statements included in the Company's Quarterly Report on Form 10-Q for the period ended September 30, 2021, filed with the SEC on November 10, 2021 (the "Q3 10-Q"). *The Company referred to these adjustments as a 'revision' in the Company's Q3 10-Q, however, these adjustments should have been identified as a 'restatement' of the previously issued audited balance sheet.* Notwithstanding the misidentification, management believes that the financial statements included in the Q3 10-Q present fairly in all material respects the Company's financial position, results of operations and cash flows for the periods presented.

1 The Company's management has concluded that at the time the  
2 abovementioned financial statements were issued, in light of the  
3 classification error described above, *a material weakness existed in the*  
4 *Company's internal control over financial reporting with respect to its*  
5 *analysis of complex financial instruments, including the classification*  
6 *of redeemable common stock as temporary equity*. However, the errors  
7 relate to the pre- business combination special purpose acquisition  
8 company and its financial statements and the Company's management  
9 believes that these errors have no material effect on the post-business  
10 combination company's financial statements. [Emphasis added].

11 107. After this news came out, the Company's share price fell to \$7.173 per  
12 share on the close of November 18, 2021, which is a fall of \$0.72 per share or  
13 approximately 9%.

14 **November 24, 2021 Form 10-Q**

15 108. The Company filed an Amended 3Q21 on November 24, 2021. The  
16 Amended 3Q21 was signed by Defendant Rodrigues and Hawwa and contained SOX  
17 certifications signed by Defendants Rodrigues and Hawwa attesting to the accuracy  
18 of the financial statements contained therein, the disclosure of any material changes  
19 to the Company's internal controls, and the disclosure of any fraud committed by the  
20 Company, its officers, or its directors.

21 109. In the Amended 3Q21, the Company disclosed that it issued a  
22 restatement for its condensed financial statements as of January 15, 2021, as of and  
23 for the three-month period ended March 31, 2021, as of and for the three and six  
24 month periods ended June 30, 2021, and for three and nine month periods ended  
25 September 30, 2021 because it made an accounting error in classifying the redeemable  
26 common stock.

27 The Company is filing this First Amendment on Form 10-Q/A to  
28 reflect a restatement of the Company's condensed financial statements

1 as of January 15, 2021, as of and for the three months ended March 31,  
2 2021, as of and for the three and six months ended June 30, 2021 and for  
3 the three and nine months ended September 30, 2021 to correct errors in  
4 the Company's classification of public shares as permanent equity *as*  
5 *further described* below.

6 \*\*\*

7 **Background of Restatement**

8 *In the Company's previously issued financial statements as of*  
9 *January 15, 2021 and March 31, 2021, a portion of the public shares*  
10 *were classified as permanent equity to maintain stockholders' equity*  
11 *greater than \$5,000,000 on the basis that the Company could*  
12 *consummate its initial business combination only if the Company has*  
13 *net tangible assets of at least \$5,000,001 under the Company's charter.*  
14 *Thus, the Company can only complete a merger and continue to exist*  
15 *as a public company if there are sufficient public shares that do not*  
16 *redeem at the merger and so it was deemed appropriate to classify the*  
17 *portion of its public shares required to keep its stockholders' equity*  
18 *above the \$5,000,000 threshold as "shares not subject to redemption."*

19 However, in light of recent comment letters issued by the  
20 Securities & Exchange Commission ("SEC") to several special purpose  
21 acquisition companies, management re-evaluated the Company's  
22 application of ASC 480-10-99 to its accounting classification of public  
23 shares. Upon reevaluation, management determined that the public  
24 shares include certain provisions that require classification of the public  
25 shares as temporary equity regardless of the minimum net tangible asset  
26 required by the Company to complete its initial business combination.

27 *The Company's management and the audit committee of the*  
28 *Company's Board of Directors concluded that it is appropriate to*

1 *restate all of the Company's previously issued financial statements to*  
 2 *report all public shares as temporary equity as of January 15, 2021, as*  
 3 *of and for the three months ended March 31, 2021, as of and for the*  
 4 *three and six months ended June 30, 2021 and for the three and nine*  
 5 *months ended September 30, 2021.*

6 \*\*\*

7 *Refer to Note 2, Restatement of Previously Issued Financial*  
 8 *Statements of this Form 10-Q/A for additional information and for the*  
 9 *summary of the accounting impacts of these adjustments to the*  
 10 *Company's condensed financial statements as of and for the three*  
 11 *months ended March 31, 2021, as of and for the three and six months*  
 12 *ended June 30, 2021 and for the three and nine months ended September*  
 13 *30, 2021.*

14 The Company previously identified a material weakness in  
 15 internal controls related to the accounting for warrants issued in  
 16 connection with our initial public offering. *As a result of the restatement*  
 17 *described in this First Amendment on Form 10-Q/A, the Company has*  
 18 *concluded there was a material weakness in the Company's internal*  
 19 *control over financial reporting at the time the abovementioned*  
 20 *financial statements were issued, and its disclosure controls and*  
 21 *procedures were not effective at the time the abovementioned financial*  
 22 *statements were issued.* [Emphasis added].

23 110. Note 2 to the Condensed Consolidated Financial Statements for  
 24 September 30, 2021 provided additional information for the Restatement:

25 NOTE 2. RESTATEMENT OF PREVIOUSLY ISSUED  
 26 FINANCIAL STATEMENTS

27 In connection with the preparation of the Company's financial  
 28 statements as of September 30, 2021 in its Original Form 10-Q, the



1 Company concluded it should restate its financial statements to classify  
2 all Public Shares in temporary equity. In accordance with ASC 480,  
3 paragraph 10-S99, redemption provisions not solely within the control  
4 of the Company require common stock subject to possible redemption to  
5 be classified outside or permanent equity. The Company previously  
6 determined the common stock subject to possible redemption to be equal  
7 to the redemption value of \$10.00 per share of common stock while also  
8 taking into consideration a redemption cannot result in net tangible assets  
9 being less than \$5,000,001.

10 *Previously, the Company did not consider redeemable shares*  
11 *classified as temporary equity as part of net tangible assets. Effective*  
12 *with these financial statements, the Company revised this*  
13 *interpretation to include temporary equity in net tangible assets.*  
14 *Accordingly, effective with this filing, the Company presents all*  
15 *redeemable common stock as temporary equity.*

16 *Additionally, the Company in its Original Form 10-Q referred to*  
17 *these adjustments as a ‘revision’, however, these adjustments should*  
18 *have been identified as a ‘restatement’ of the previously issued*  
19 *financial statements.*

20 As a result, management has noted a reclassification adjustment  
21 related to temporary equity and permanent equity. This resulted in an  
22 adjustment to the initial carrying value of the common stock subject to  
23 possible redemption with the offset recorded to additional paid-in capital  
24 (to the extent available), accumulated deficit and common stock.  
25 [Emphasis added].

26 111. The impact of the restatement on the financial statements is reflected in  
27 the following table:  
28

	As Previously Reported	Adjustment	As Restated	
<b>Balance Sheet as of January 15, 2021</b>				
Common stock subject to redemption	\$ 365,248,533	\$ 48,751,367	\$ 414,000,000	
Common stock shares	\$ 1,523	\$ (488)	\$ 1,035	
Additional paid-in capital	\$ 6,415,718	\$ (6,415,718)	\$ —	
Accumulated deficit	\$ (1,417,236)	\$ (42,335,161)	\$ (43,752,397)	
Total Stockholders' Equity (Deficit)	\$ 5,000,005	\$ (48,751,367)	\$ (43,751,362)	
<b>Balance Sheet as of March 31, 2021</b>				
Common stock subject to possible redemption	\$ 371,544,602	\$ 42,455,398	\$ 414,000,000	
Common stock shares	\$ 1,460	\$ (425)	\$ 1,035	
Additional paid-in capital	\$ 119,812	\$ (119,812)	\$ —	
Retained Earnings (Accumulated deficit)	\$ 4,878,733	\$ (42,335,161)	\$ (37,456,428)	
Total Stockholders' Equity (Deficit)	\$ 5,000,005	\$ (42,455,398)	\$ (37,455,393)	
<b>Statement of Cash Flows for the Three Months Ended March 31, 2021</b>				
Initial classification of common stock subject to possible redemption	\$ 365,248,633	\$ 48,751,367	\$ 414,000,000	
Change in value of common stock subject to possible redemption	\$ 6,295,969	\$ (6,295,969)	\$ —	
<b>Statement of Cash Flows for the Six Months Ended June 30, 2021</b>				
Initial classification of common stock subject to possible redemption	\$ 365,248,633	\$ 48,751,367	\$ 414,000,000	
Change in value of common stock subject to possible redemption	\$ 48,751,367	\$ (48,751,367)	\$ —	
<b>Condensed Consolidated Statement of Changes in Stockholders' Equity (Deficit) March 31, 2021</b>				
Sale of 41,400,000 Units, net of underwriting discounts	\$ 371,629,911	\$ (371,629,911)	\$ —	
Initial value of common stock subject to possible redemption at IPO date	\$ (365,248,633)	\$ 365,248,633	\$ —	
Change in value of common stock subject to redemption	\$ 6,295,969	\$ (6,295,969)	\$ —	
Accretion for common stock to redemption amount	\$ —	\$ (42,359,126)	\$ (42,359,126)	
Total stockholders' equity (deficit)	\$ 5,000,005	\$ (42,455,398)	\$ (37,455,393)	
<b>Condensed Consolidated Statement of Changes in Stockholders' Equity (Deficit) June 30, 2021</b>				
Change in value of common stock subject to redemption	\$ 42,455,398	\$ (42,455,398)	\$ —	
Total stockholders' equity	\$ (50,666,168)	\$ —	\$ (50,666,168)	
In connection with the change in presentation for common stock subject to redemption, the Company also restated its income (loss) per share. The impact of this restatement on the Company's financial statement is reflected in the following table:				
	Basic and diluted weighted average shares outstanding, Class A common stock subject to possible redemption	Basic and diluted net loss per share, Class A common stock	Basic and diluted weighted average shares outstanding, Class B common stock subject to possible redemption	Basic and diluted net loss per share, Class B common stock
<b>For the three months ended, March 31, 2021</b>				
As Previously Reported	36,524,863	\$ —	14,187,614	\$ 0.34
As Restated	34,500,000	\$ 0.11	10,125,000	\$ 0.11
<b>For the three months ended, June 30, 2021</b>				
As Previously Reported	37,153,752	\$ —	14,596,248	\$ (0.84)
As Restated	41,400,000	\$ (0.24)	10,350,000	\$ (0.24)
<b>For the six months ended, June 30, 2021</b>				
As Previously Reported	61,945,851	\$ —	14,393,060	\$ (0.51)
As Restated	37,969,061	\$ (0.15)	10,238,122	\$ (0.15)
<b>For the three months ended, September 30, 2021</b>				
As Previously Reported	51,750,000	\$ 0.22	\$ —	\$ —
As Restated	41,400,000	\$ 0.22	10,350,000	\$ 0.22
<b>For the nine months ended, September 30, 2021</b>				
As Previously Reported	48,906,593	\$ 0.09	\$ —	\$ —
As Restated	39,125,275	\$ 0.08	10,275,824	\$ 0.08

112. The Company's condensed financial statements as of and for the three and six month periods ended June 30, 2021, disclosed that previous financial statements should not be relied upon, including the Preliminary Proxy Statement/Prospectus. The Company restated the material changes in financial statements as of and for the three and six month periods ended June 30, 2021.

113. Moreover, due to the improper accounting, the Company materially misstated its EPS in their financial statements as of and for the three and six month periods ended June 30, 2021. The Company failed to indicate that there was a revision or restatement required for either of those periods in its 3Q21 and the November 2021 8-K public statements.

114. After the Amended 3Q21 was released, the Company's shares fell to a close at \$8.01 per share on November 24, 2021, which is a fall of \$0.51 or approximately 6% from the previous close.

**CORPORATE GOVERNANCE**

115. As members of the Board, each of the director Defendants were required to follow the Code of Ethics, the corporate governance guidelines and the charters of each committee of the Board of Directors in place at the time they served.

116. Defendants failed to do so.

**NGA Code of Ethics**

117. In NGA's Registration Statement, NGA stated with regards to its "Code of Ethics" that:

Prior to the effectiveness of this registration statement of which this prospectus forms a part, we will have adopted a Code of Ethics applicable to our directors, director nominees, officers and employees. We intend to disclose any amendments to or waivers of certain provisions of our Code of Ethics in a Current Report on Form 8-K. See "Where You Can Find Additional Information."

**Embark's Code of Conduct**

118. The introduction to Embark's Code of Conduct reads, in relevant part:

This Code of Business Conduct and Ethics (the "Code") contains general guidelines for conducting the business of Company Technology, Inc. (the "Company" or "we") consistent with the highest standards of business ethics. To the extent this Code requires a higher standard than required by commercial practice or applicable laws, rules or regulations, the Company adheres to these higher standards.

119. The Code of Conduct's introduction continues by stating that it "applies to our Directors, officers, and other employees (including employees we engage through certain third parties in jurisdictions outside the United States)."

120. The Code of Conduct instructs regarding the accuracy of the Financial Reports and Other Public Communications:

1           As a public company we are subject to various securities laws,  
2 regulations and reporting obligations. Both federal law and our policies  
3 require the disclosure of accurate and complete information regarding  
4 the Company's business, financial condition and results of operations.  
5 Inaccurate, incomplete or untimely reporting will not be tolerated and  
6 can severely damage the Company and result in legal liability.

7           The Company's principal financial officers and other employees  
8 working in the finance department have a special responsibility to ensure  
9 that all of our financial disclosures are full, fair, accurate, timely and  
10 understandable. These employees must understand and strictly comply  
11 with generally accepted accounting principles and all standards, laws and  
12 regulations for accounting and financial reporting of transactions,  
13 estimates and forecasts.

14       121. The Code of Conduct instructs that Company should have "Accurate and  
15 reliable" records and further states:

16           Accurate and reliable records are crucial to our business. Our  
17 records are the basis of our earnings statements, financial reports,  
18 regulatory submissions and many other aspects of our business and guide  
19 our business decision-making and strategic planning. Company records  
20 include financial records, personnel records, records relating to our  
21 technology and product development, customer collaborations,  
22 manufacturing and regulatory submissions and all other records  
23 maintained in the ordinary course of our business.

24           All Company records must be complete, accurate and reliable in  
25 all material respects. Each employee and director must follow any formal  
26 document retention policy of the Company with respect to Company  
27 records within such employee's or director's control. Please contact your  
28

1 supervisor or the Company's Chief Legal Officer to obtain a copy of any  
2 such policy or with any questions concerning any such policy.

3 122. The Code of Conduct instructs that Embark personnel must "act in the  
4 best interests of the Company" and further stated that:

5 You must refrain from engaging in any activity or having a  
6 personal interest that presents a "conflict of interest" and should seek to  
7 avoid even the appearance of a conflict of interest. A conflict of interest  
8 occurs when your personal interest interferes with the interests of the  
9 Company. A conflict of interest can arise whenever you, as an employee,  
10 officer or director, take action or have an interest that prevents you from  
11 performing your Company duties and responsibilities honestly,  
12 objectively and effectively.

13 123. Finally, the Code of Conduct states with regards to violation of Code of  
14 Conduct is that:

15 It is Company policy that any employee or director who violates  
16 this Code will be subject to appropriate discipline, which may include,  
17 for an employee, termination of employment or, for a director, a request  
18 that such director resign from the Board of Directors of the Company  
19 (the "Board of Directors"). This determination will be based upon the  
20 facts and circumstances of each particular situation. If you are accused  
21 of violating this Code, you will be given an opportunity to present your  
22 version of the events at issue prior to any determination of appropriate  
23 discipline. Employees and directors who violate the law or this Code  
24 may expose themselves to substantial civil damages, criminal fines and  
25 prison terms. The Company may also face substantial fines and penalties  
26 and may incur damage to its reputation and standing in the community.  
27 Your conduct as a representative of the Company, if it does not comply  
28

1 with the law or with this Code, can result in serious consequences for  
2 both you and the Company.

3 **NGA Audit Committee Charter**

4 124. In NGA's Registration Statement, NGA stated with regards to its "Audit  
5 Committee Charter" that:

6 We will adopt an audit committee charter, which will detail the  
7 principal functions of the audit committee, including:

- 8 • the appointment, compensation, retention, replacement, and  
9 oversight of the work of the independent auditors and any other  
10 independent registered public accounting firm engaged by us;
- 11 • pre-approving all audit and non-audit services to be provided by  
12 the independent auditors or any other registered public accounting  
13 firm engaged by us, and establishing pre-approval policies and  
14 procedures;
- 15 • reviewing and discussing with the independent auditors all  
16 relationships the auditors have with us in order to evaluate their  
17 continued independence;
- 18 • setting clear hiring policies for employees or former employees of  
19 the independent auditors;
- 20 • setting clear policies for audit partner rotation in compliance with  
21 applicable laws and regulations;
- 22 • obtaining and reviewing a report, at least annually, from the  
23 independent auditors describing (i) the independent auditor's  
24 internal quality-control procedures and (ii) any material issues  
25 raised by the most recent internal quality-control review, or peer  
26 review, of the audit firm, or by any inquiry or investigation by  
27 governmental or professional authorities, within, the preceding  
28



1 five years respecting one or more independent audits carried out  
2 by the firm and any steps taken to deal with such issues;

- 3 • reviewing and approving any related party transaction required to  
4 be disclosed pursuant to Item 404 of Regulation S-K promulgated  
5 by the SEC prior to us entering into such transaction; and
- 6 • reviewing with management, the independent auditors, and our  
7 legal advisors, as appropriate, any legal, regulatory or compliance  
8 matters, including any correspondence with regulators or  
9 government agencies and any employee complaints or published  
10 reports that raise material issues regarding our financial statements  
11 or accounting policies and any significant changes in accounting  
12 standards or rules promulgated by the Financial Accounting  
13 Standards Board, the SEC or other regulatory authorities.

14 **Embark's Audit Committee Charter**

15 125. The Charter of the Audit Committee of the Board of Directors of  
16 Embark, Inc. (the "Audit Committee Charter") defines the responsibilities of the  
17 Board's Audit Committee.

18 126. Per the Audit Committee Charter, the purpose of the Audit Committee is  
19 to "oversee the accounting and financial reporting processes of the Company and the  
20 audits of the financial statements of the Company." It further states that:

21 The Committee's responsibilities are limited to oversight. The  
22 Company's management is responsible for establishing and maintaining  
23 accounting policies and procedures in accordance with generally  
24 accepted accounting principles ("GAAP") and other applicable reporting  
25 and disclosure standards and for preparing the Company's financial  
26 statements. The Company's independent auditors are responsible for  
27 auditing and reviewing those financial statements.

1        127. The Audit Committee Charter lists among the Audit Committee's  
2 responsibilities:

3            *Appointment and Oversight.* The Committee is directly  
4 responsible for the appointment, compensation, retention, oversight of  
5 the work and assessment of qualifications, performance and  
6 independence of our independent auditor (including resolution of any  
7 disagreements between Company management and the independent  
8 auditor regarding financial reporting) and any other registered public  
9 accounting firm engaged for the purpose of preparing or issuing an audit  
10 report or related work or performing other audit, review or attest services  
11 for the Company, and the independent auditor and each such other  
12 registered public accounting firm must report directly to the Committee.

13            The Committee, or the Chair of the Committee, must pre-approve  
14 any audit and non-audit service provided to the Company by the  
15 independent auditor, unless the engagement is entered into pursuant to  
16 appropriate preapproval policies established by the Committee or if such  
17 service falls within available exceptions under SEC rules

18            \* \* \*

19            *Audit Problems.* The Committee must discuss with the  
20 independent auditor any audit problems or difficulties and  
21 management's response.

22            *Form 10-K Review.* The Committee must review and discuss the  
23 annual audited financial statements and related disclosures, as well as  
24 critical accounting policies, with management and the independent  
25 auditor, including the Company's disclosures under "Management's  
26 Discussion and Analysis of Financial Condition and Results of  
27 Operations."



1           128. As members of the Company's Board, the Embark Defendants were held  
2 to the highest standards of honesty and integrity and charged with overseeing the  
3 Company's business practices and policies, and assuring the integrity of its financial  
4 and business records.

5           129. The conduct of the Embark Defendants complained of herein involves a  
6 knowing and culpable violation of their obligations as directors and officers of the  
7 Company, the absence of good faith on their part, and a reckless disregard for their  
8 duties to the Company and its investors that the Embark Defendants were aware posed  
9 a risk of serious injury to the Company.

10           130. By reason of their positions as officers and/or directors of the Company,  
11 and because of their ability to control the business and corporate affairs of the  
12 Company, the Embark Defendants owed the Company and its investors the fiduciary  
13 obligations of trust, loyalty, and good faith. The obligations required the Embark  
14 Defendants to use their utmost abilities to control and manage the Company in an  
15 honest and lawful manner. The Embark Defendants were and are required to act in  
16 furtherance of the best interests of the Company and its investors.

17           131. Each director of the Company owes to the Company and its investors the  
18 fiduciary duty to exercise loyalty, good faith, and diligence in the administration of  
19 the affairs of the Company and in the use and preservation of its property and assets.  
20 In addition, as officers and/or directors of a publicly held company, the Embark  
21 Defendants had a duty to promptly disseminate accurate and truthful information with  
22 regard to the Company's operations, finances, and financial condition, as well as  
23 present and future business prospects, so that the market price of the Company's stock  
24 would be based on truthful and accurate information.

25           132. To discharge their duties, the officers and directors of the Company were  
26 required to exercise reasonable and prudent supervision over the management,  
27 policies, practices, and controls of the affairs of the Company. By virtue of such  
28 duties, the officers and directors of the Company were required to, among other

1 things:

2 (a) ensure that the Company complied with its legal obligations and  
3 requirements, including acting only within the scope of its legal authority and  
4 disseminating truthful and accurate statements to the SEC and the investing  
5 public;

6 (b) conduct the affairs of the Company in an efficient, businesslike  
7 manner so as to make it possible to provide the highest quality performance of  
8 its business, to avoid wasting the Company's assets, and to maximize the value  
9 of the Company's stock;

10 (c) properly and accurately guide investors and analysts as to the true  
11 financial condition of the Company at any given time, including making  
12 accurate statements about the Company's business prospects, and ensuring that  
13 the Company maintained an adequate system of financial controls such that the  
14 Company's financial reporting would be true and accurate at all times;

15 (d) remain informed as to how the Company conducted its operations,  
16 and, upon receipt of notice or information of imprudent or unsound conditions  
17 or practices, make reasonable inquiries in connection therewith, take steps to  
18 correct such conditions or practices, and make such disclosures as necessary to  
19 comply with federal and state securities laws;

20 (e) ensure that the Company was operated in a diligent, honest, and  
21 prudent manner in compliance with all applicable federal, state and local laws,  
22 and rules and regulations; and

23 (f) ensure that all decisions were the product of independent business  
24 judgment and not the result of outside influences or entrenchment motives.

25 133. Each Embark Defendant, by virtue of his position as a director and/or  
26 officer, owed to the Company and to its shareholders the fiduciary duties of loyalty,  
27 good faith, and the exercise of due care and diligence in the management and  
28 administration of the affairs of the Company, as well as in the use and preservation of

1 its property and assets. The conduct of the Embark Defendants complained of herein  
2 involves a knowing and culpable violation of their obligations as directors and officers  
3 of the Company, the absence of good faith on their part, and a reckless disregard for  
4 their duties to the Company and its shareholders that the Embark Defendants were  
5 aware, or should have been aware, posed a risk of serious injury to the Company.

6 134. The Embark Defendants breached their duties of loyalty and good faith  
7 by causing the Company to issue false and misleading statements concerning the  
8 financial condition of the Company. As a result, the Company has expended, and will  
9 continue to expend, significant sums of money related to investigations and lawsuits  
10 and to structure settlements to resolve them.

#### 11 **AIDING AND ABETTING**

12 135. In committing the wrongful acts alleged herein, the NGA Defendants  
13 have pursued, or joined in the pursuit of, a common course of conduct, and have acted  
14 in concert with and conspired with one another in furtherance of their wrongdoing.

15 136. The NGA Defendants caused the Company to conceal the true facts as  
16 alleged herein. The NGA Defendants further aided and abetted and/or assisted each  
17 other in breaching their respective duties.

18 137. The purpose and effect of the conspiracy, common enterprise, and/or  
19 common course of conduct was, among other things, to facilitate and disguise the  
20 NGA Defendants' violations of law, including breaches of fiduciary duty, unjust  
21 enrichment, abuse of control, gross mismanagement, waste of corporate assets, and  
22 violations of the Exchange Act.

23 138. The NGA Defendants accomplished their conspiracy, common  
24 enterprise, and/or common course of conduct by causing the Company purposefully,  
25 recklessly, or negligently to conceal material facts, fail to correct such  
26 misrepresentations, and violate applicable laws. In furtherance of this plan,  
27 conspiracy, and course of conduct, the NGA Defendants collectively and individually  
28 took the actions set forth herein.



1           139. Each of the NGA Defendants was a direct, necessary, and substantial  
2 participant in the conspiracy, common enterprise, and/or common course of conduct  
3 complained of herein.

4           140. Each of the NGA Defendants aided and abetted and rendered substantial  
5 assistance in the wrongs complained of herein. In taking such actions to substantially  
6 assist the commission of the wrongdoing complained of herein, each of the NGA  
7 Defendants acted with actual or constructive knowledge of the primary wrongdoing,  
8 either took direct part in, or substantially assisted the accomplishment of that  
9 wrongdoing, and was or should have been aware of their overall contribution to and  
10 furtherance of the wrongdoing.

11           141. At all times relevant hereto, each of the NGA Defendants was the agent  
12 of each of the other NGA Defendants and at all times was acting within the course  
13 and scope of such agency.

14           **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

15           142. Plaintiff will adequately and fairly represent the interests of the  
16 Company and its shareholders in enforcing and prosecuting its rights and has retained  
17 counsel competent and experienced in derivative litigation.

18           143. Plaintiff is a current owner of the Company stock and has continuously  
19 been an owner of Company stock during all times relevant to the Individual  
20 Defendants' wrongful course of conduct alleged herein. Plaintiff understands his  
21 obligation to hold stock throughout the duration of this action and is prepared to do  
22 so.

23           144. Because of the facts set forth throughout this Complaint, demand on the  
24 Company Board to institute this action is not necessary because such a demand would  
25 have been a futile and useless act.

26           145. The Company Board is currently comprised of seven (7) directors:  
27 Robertson, Rodrigues, Moak, Chao, Grady, and non-party directors Chiodo and  
28 Herscher. Thus, Plaintiff is required to show that a majority of the Director

1 Defendants, *i.e.*, four (4), cannot exercise independent objective judgment about  
2 whether to bring this action or whether to vigorously prosecute this action.

3 146. The Embark Defendants either knew or should have known of the false  
4 and misleading statements that were issued on the Company's behalf and took no  
5 steps in a good faith effort to prevent or remedy that situation.

6 147. The Embark Defendants (or at the very least a majority of them) cannot  
7 exercise independent objective judgment about whether to bring this action or whether  
8 to vigorously prosecute this action. For the reasons that follow, and for reasons  
9 detailed elsewhere in this complaint, Plaintiff has not made (and should be excused  
10 from making) a pre-filing demand on the Board to initiate this action because making  
11 a demand would be a futile and useless act.

12 148. Each of the Embark Defendants approved and/or permitted the wrongs  
13 alleged herein to have occurred and participated in efforts to conceal or disguise those  
14 wrongs from the Company's stockholders or recklessly and/or with gross negligence  
15 disregarded the wrongs complained of herein, and are therefore not disinterested  
16 parties.

17 149. Each of the Embark Defendants authorized and/or permitted the false  
18 statements to be disseminated directly to the public and made available and distributed  
19 to shareholders, authorized and/or permitted the issuance of various false and  
20 misleading statements, and are principal beneficiaries of the wrongdoing alleged  
21 herein, and thus, could not fairly and fully prosecute such a suit even if they instituted  
22 it.

23 150. Additionally, each of the Embark Defendants received payments,  
24 benefits, stock options, and other emoluments by virtue of their membership on the  
25 Board and their control of the Company.

**DAMAGES TO EMBARK**

151. As a direct and proximate result of the Individual Defendants' misconduct, Embark has lost and expended, and will lose and expend, many millions of dollars.

152. Such expenditures include, but are not limited to, legal fees associated with the Securities Class Action filed against the Company.

153. Such expenditures also include, but are not limited to, the cost of implementing measures to remediate the Overpayment Misconduct.

154. Such losses include, but are not limited to, handsome compensation and benefits paid to the Embark Defendants who breached their fiduciary duties to the Company, including bonuses tied to the Company's attainment of certain objectives, and benefits paid to the Embark Defendants who breached their fiduciary duties to the Company.

155. As a direct and proximate result of the Individual Defendants' conduct, Embark has also suffered and will continue to suffer a loss of reputation and goodwill, and a "liar's discount" that will plague the Company's stock in the future due to the Company's and their misrepresentations and the Individual Defendants' breaches of fiduciary duties and unjust enrichment.

**FIRST CAUSE OF ACTION**

**Against The Embark Defendants for Breach of Fiduciary Duties**

156. Plaintiff incorporates by reference and re-allege each and every allegation contained above, as though fully set forth herein.

157. The Embark Defendants owe the Company fiduciary obligations. By reason of their fiduciary relationships, the Embark Defendants owed and owe the Company the highest obligation of good faith, fair dealing, loyalty, and due care.

158. The Embark Defendants violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, and good faith.

159. The Embark Defendants engaged in a sustained and systematic failure to

properly exercise their fiduciary duties. Among other things, the Embark Defendants breached their fiduciary duties of loyalty and good faith by allowing the Company to improperly misrepresent the Company's publicly reported financials. These actions could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

160. As a direct and proximate result of the Embark Defendants' failure to perform their fiduciary obligations, the Company has sustained significant damages. As a result of the misconduct alleged herein, the Embark Defendants are liable to the Company.

161. As a direct and proximate result of the Embark Defendants' breach of their fiduciary duties, the Company has suffered damage, not only monetarily, but also to its corporate image and goodwill. Such damage includes, among other things, costs associated with defending securities lawsuits, severe damage to the share price of the Company, resulting in an increased cost of capital, the waste of corporate assets, and reputational harm.

## **SECOND CAUSE OF ACTION**

### **Violations of Section 14(a) of the Exchange Act**

#### **Defendants Robertson, Manget, Dalglish, Jarratt, Schaefer and**

#### **Sparkes for Violations of Section 14(a) of the Exchange Act**

162. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

163. Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a)(1), provides that "[i]t shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the [SEC] may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent

1 or authorization in respect of any security (other than an exempted security) registered  
2 pursuant to section 12 of this title [15 U.S.C. § 78l].”

3 164. Rule 14a-9, promulgated pursuant to § 14(a) of the Exchange Act,  
4 provides that no proxy statement shall contain “any statement which, at the time and  
5 in the light of the circumstances under which it is made, is false or misleading with  
6 respect to any material fact, or which omits to state any material fact necessary in  
7 order to make the statements therein not false or misleading.” 17 C.F.R. § 240.14a-9.

8 165. Defendants Robertson, Manget, Dalglish, Jarratt, Schaefer and Sparkes  
9 caused the Definitive Proxy Statement to be false and misleading: (i) by failing to  
10 abide by the GAAP rules in classifying the redeemable public shares, (ii) by failing  
11 to abide by the Code of Ethics; and (iii) by reaching an agreement to merge with  
12 Legacy Embark without adequate due diligence.

13 166. Defendants Robertson, Manget, Dalglish, Jarratt, Schaefer and Sparkes  
14 caused the Definitive Proxy Statement to be false and misleading by failing to disclose  
15 that the Code of Ethics was not abided by as evinced by the accounting errors  
16 discussed herein and the fact that the NGA Defendants were engaging in the  
17 Overpayment Misconduct, soliciting the Merger with Legacy Embark without having  
18 conducted adequate due diligence.

19 167. Defendants Robertson, Manget, Dalglish, Jarratt, Schaefer and Sparkes  
20 caused the Definitive Proxy Statement to be materially false and misleading, and  
21 failed to disclose material facts necessary to make the statements made not false and  
22 misleading. Specifically, it contained material errors that required the Company to  
23 issue a restatement for such financial statements to be in accordance with GAAP and  
24 failed to disclose that: (i) the impact of the error on the Company’s financials as of  
25 and for the three and six month periods ended June 30, 2021, or as of and for the three  
26 and nine month periods ended September 30, 2021; (ii) the disclosures failed to  
27 mention that treating this error as a restatement instead of a revision would require  
28 the Company to make adjustments to and the reissuance of the amounts reflected in

1 the prior financial statements as compared to making a revision only to the January  
 2 15, 2021 financial statements; (iii) the disclosures failed to mention that the Company  
 3 violated the GAAP rules surrounding the accounting of temporary and permanent  
 4 equity that had been in practice since 2009; and (4) the Company failed to maintain  
 5 adequate internal controls.

6 168. As a result, Embark's public statements were materially false and  
 7 misleading at all relevant times. The Company was damaged as a result of Defendants  
 8 Robertson, Manget, Dalglish, Jarratt, Schaefer, and Sparkes material  
 9 misrepresentations and omissions in the Definitive Proxy Statement.

### 10 **THIRD CAUSE OF ACTION**

#### 11 **Against The Embark Defendants for Gross Mismanagement**

12 169. Plaintiff incorporates by reference and re-allege each allegation  
 13 contained above, as though fully set forth herein.

14 170. By their actions alleged herein, the Embark Defendants, either directly  
 15 or through aiding and abetting, abandoned and abdicated their responsibilities and  
 16 fiduciary duties with regard to prudently managing the assets and business of the  
 17 Company in a manner consistent with the operations of a publicly held corporation.

18 171. As a direct and proximate result of the Embark Defendants' gross  
 19 mismanagement and breaches of duty alleged herein, the Company has sustained  
 20 significant damages in excess of hundreds of millions of dollars.

21 172. Because of the misconduct and breaches of duty alleged herein, the  
 22 Embark Defendants are liable to the Company.

### 23 **FOURTH CAUSE OF ACTION**

#### 24 **Against the Embark Defendants for Waste of Corporate Assets**

25 173. Plaintiff incorporates by reference and realleges each and every  
 26 allegation contained above, as though fully set forth herein.

27 174. The wrongful conduct alleged regarding the issuance of false and  
 28 misleading statements was continuous, connected, and on-going throughout the



1 Relevant Period. It resulted in continuous, connected, and ongoing harm to the  
2 Company.

3 175. As a result of the misconduct described above, the Embark Defendants  
4 wasted corporate assets by, *inter alia*: (i) paying excessive compensation and bonuses  
5 to certain of its executive officers; (ii) awarding self-interested stock options to certain  
6 officers and directors; and (iii) incurring potentially millions of dollars of legal  
7 liability and/or legal costs to defend the Individual Defendants' unlawful actions.

8 176. As a result of the waste of corporate assets, the Embark Defendants are  
9 liable to the Company.

### 10 **FIFTH CAUSE OF ACTION**

#### 11 **(Against The Individual Defendants For Unjust Enrichment)**

12 177. Plaintiff incorporates by reference and realleges each and every  
13 allegation set forth above, as though fully set forth herein.

14 178. By their wrongful acts, violations of law, and inaccurate and untruthful  
15 information and/or omissions of material fact that they made and/or caused to be  
16 made, the Individual Defendants were unjustly enriched at the expense of, and the  
17 detriment of, the Company

18 179. The Individual Defendants either benefitted financially from the  
19 improper conduct, or received bonuses, stock options, or similar compensation from  
20 the Company that was tied to the performance of the Company or its stock price or  
21 received compensation or other payments that were unjust in light of the Individual  
22 Defendants' bad faith conduct.

23 180. Plaintiff, as a shareholder and representative of the Company seeks  
24 restitution from the Individual Defendants and seek an order from this Court  
25 disgorging all profits, including from insider transactions, the redemption of preferred  
26 stock, benefits, and other compensation, including any performance-based or  
27 valuation-based compensation, obtained by the Individual Defendants due to their  
28 wrongful conduct and breach of their fiduciary and contractual duties.

181. Plaintiff, on behalf of the Company, has no adequate remedy at law.

**REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiff demands judgment as follows:

A. Determining that this action is a proper derivative action maintainable under law, and that demand is excused;

B. Awarding, against all the Individual Defendants and in favor of the Company, the damages sustained by the Company as a result of said Defendants' breaches of their fiduciary duties;

C. Directing the Company to take all necessary actions to reform and improve its corporate governance and internal procedures, to comply with the Company's existing governance obligations and all applicable laws and to protect the Company and its investors from a recurrence of the damaging events described herein;

D. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

E. Granting such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

Dated: November 30, 2022

**MAGNANIMO DEAN LAW, APC**

/s/ Lauren A. Dean

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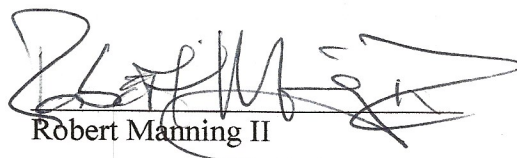
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*Attorneys for Plaintiff*

**VERIFICATION**

I, Robert Manning II, declare that I have reviewed the Verified Shareholder Derivative Complaint ("Complaint") prepared on behalf of Embark Technology, Inc. f/k/a Northern Genesis Acquisition Corp. II and authorize its filing. I have reviewed the allegations made in the Complaint, and to those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely on my counsel and their investigation and for that reason believe them to be true. I further declare that I am a current holder, and have been a holder, of Embark Technology, Inc. f/k/a Northern Genesis Acquisition Corp. II common stock at all relevant times.



Robert Manning II